

1934 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1934)
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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sary and to fix their compensation. (Act Apr. 17, 1933, c. 291, §15.)

5670-20. Fees to be paid to county treasurer.—The Clerk of the District Court of said county shall thereafter pay all the library fees collected by him,

pursuant to Section four thereof, to the County Treasurer of said County, who is hereby authorized to disburse the same and any other moneys belonging to said library, upon the order of said Trustees to pay the necessary expenses of said library. (Act Apr. 17, 1933, c. 291, §16.)

CHAPTER 33A

Historical Societies

5670-11. County Board or City Councils may furnish room for Historical Societies.—That the county board of any county or the governing body of any municipal corporation, or public library in the State of Minnesota, are hereby authorized and empowered to furnish a room, or rooms, in the court house of the county, or in the municipal building, or public library, as the case may be, for the use of the historical society of such county, and to furnish light and heat for such room or rooms. (Act Apr. 24, 1929, c. 324, §1.)

5670-12. Appropriation.—That the county board of any county in the State of Minnesota, having a population of less than twenty-five thousand inhabitants, according to the last United States census, is hereby authorized and empowered to appropriate out of the revenue fund of such county, such sum not exceeding one thousand dollars annually, and in counties where the population is not less than twenty-five thousand inhabitants nor more than seventy-five thousand inhabitants, the county board of such county is hereby authorized to appropriate a sum not exceeding the

sum of two thousand dollars annually, and in counties where the population is more than seventy-five thousand inhabitants the county board is hereby authorized to appropriate a sum not exceeding three thousand dollars annually, as it may deem advisable, to be paid to the Historical Society of such counties respectively, to be used for the promotion of historical work within the borders thereof, and for the collection, preservation and publication of historical material, and to disseminate historical information of the county, and in general to defray the expense of carrying on the historical work in such county.

Provided, that no county board is authorized to appropriate any funds for the benefit of any county Historical Society unless such society shall be affiliated with and approved by the Minnesota Historical Society. (Act Apr. 24, 1929, c. 324, §2.)

5670-13. Application.—This act shall not affect any other act relating to historical work, nor apply to any county which is now authorized by law to make appropriations for such work. (Act Apr. 24, 1929, c. 324, §3.)

CHAPTER 35

Employments Licensed by State Boards or Officials

ATTORNEYS AT LAW

5686-1. Admission of attorneys to practice in certain cases.—Any adult resident of the State of Minnesota, who has completed the prescribed course of study for admission to the practice of law in any state of the United States where said prescribed course of study is for a period of not less than three years, and who has duly examined as to his qualifications by the law examining body of said state and admitted to the practice of law therein, and who has served as an official court reporter in the State of Minnesota for not less than five years immediately following said examination under appointment of a district judge of this state, and who is recommended for his character, ability and learning by said judge, shall upon furnishing proof of the foregoing facts and payment of the usual fee be on motion before the supreme court of this state admitted within six months after the passage of this act to practice law in all of the courts of this state without examination. (Act Apr. 20, 1929, c. 267.)

This act is invalid. 178M335, 227NW180.

5686-2. Admission to practice at law of certain persons.—Any person who has studied law in the office of a practicing attorney of this State for a period of at least three years in compliance with the rules of the State Board of Bar Examiners in force at the time of such study and who has been a student in the Academic College of the University of Minnesota for a period of more than one year and who has served in the military or naval forces of the United States during the World War and received an honorable discharge therefrom and who was disabled therein or thereby within the purview of the Act of Congress approved June 7th, 1924, known as "World War Veteran's Act, 1924" and whose disability is rated at least ten per cent thereunder at the time of the pas-

sage of this act, shall on motion before the Supreme Court upon proof of such facts and that he is an adult resident of the State of Minnesota of good moral character, recommended by two district judges of this State, be admitted to practice law without examination upon payment of the usual fee for such examination. (Act Apr. 27, 1929, c. 424, §1.)

Laws 1929, c. 424, admitting certain disabled veterans and court reporters to practice of law, violate the equality provisions of the constitution. 178M331, 227NW179; 178M335, 227NW180.

An agreement to pay an attorney to act as vice president of a bank on a salary, the fees of the attorney to be assets of the bank, held invalid as in effect a practice of law by the bank, a corporation having no authority to practice law. 181M254, 232NW318. See Dun. Dig. 676.

Foreclosure of mortgages by advertisement, where an attorney's fee is charged, and the conducting of proceedings in the probate court in the matter of estates and guardianships, held "practice of law." 181M254, 232NW318. See Dun. Dig. 676.

5687. Unauthorized practice. [Repealed].

Repealed. Laws 1931, c. 114, post, §5687-2.

5687-1. Unauthorized practice of law—penalty.

(a) It shall be unlawful for any person or association of persons, except members of the Bar of Minnesota admitted and licensed to practice as attorneys at law, to appear as attorney or counsellor at law in any action or proceeding in any court in this state to maintain, conduct or defend the same, except in his own behalf as a party thereto in other than a representative capacity, or, by word, sign, letter, or advertisement, to hold out himself or themselves as competent or qualified to give legal advice or counsel or to prepare legal documents, or as being engaged in advising or counseling in law or acting as attorney or counsellor at law, or in furnishing to others the services of a lawyer or lawyers, or, for a fee or any consideration, to give legal advice or counsel, perform for or furnish to another legal services, or, for or

without a fee or any consideration, to prepare (directly or through another) for another person, firm or corporation, any will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or, for a fee or any consideration, to prepare for another person, firm or corporation, any other legal document, except as provided in subdivision (c) below.

(b) No corporation, organized for pecuniary profit by or through its officers or employees or anyone else, shall maintain, conduct or defend (except in its own behalf when a party litigant) any action or proceeding in any court in this state; or shall, by or through its officers or employees or anyone else, give or assume to give legal advice or counsel or perform for or furnish to another person or corporation legal services; or shall, by word, sign, letter or advertisement, solicit the public or any person to permit it to prepare or cause to be prepared any will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or hold itself out as desiring or willing to prepare any such document, or to give legal advice or legal services relating thereto or to give general legal advice or counsel, or to act as attorney at law or as supplying or being in a position to supply the services of a lawyer or lawyers; or shall to any extent engage in or hold itself out as being engaged in the business of supplying services of a lawyer or lawyers; or shall cause to be prepared any person's will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or any other legal document for another person, firm or corporation, and receive, directly or indirectly, all or a part of the charges for such preparation or any benefits therefrom; or shall itself prepare, directly or through another, any such document for another person, firm or corporation, except as provided in (c) below.

The foregoing shall not prohibit anyone from drawing, without charge for so doing, any document to which he, or a person whose employee he is or a firm whereof he is a member or a corporation whose officer or employee he is, a party, except another's will or testamentary disposition or instrument of trust serving purposes similar to those of a will; and shall not prohibit a person from drawing a will for another in an emergency wherein the imminence of death leaves insufficient time to have the same drawn and its execution supervised by a licensed attorney at law; and shall not prohibit anyone, acting as broker for the parties or agent of one of the parties to a sale or trade or lease of property or to a loan, from drawing or assisting in drawing, with or without charge therefor, such papers as may be incident to such sale, trade, lease, or loan; and shall not prohibit any insurance company from causing to be defended, or from offering to cause to be defended through lawyers of its selection, the insureds in policies issued or to be issued by it, in accordance with the terms of such policies; and shall not prohibit one such licensed attorney at law from acting for several common-carrier corporations or any of its subsidiaries pursuant to arrangement between said corporations; and shall not prohibit any bona fide labor organization from giving legal advice to its members in matters arising out of their employment; and shall not prohibit any person from conferring or cooperating with a licensed attorney at law of another in preparing any legal document, if such attorney is not directly or indirectly in the employ of such person or of any person, firm or corporation represented by such person; and shall not prohibit any licensed attorney at law of Minnesota, who is an officer or employee of a corporation, from drawing, for or without compensation, any document to which the corporation is a party or wherein it is interested personally or in a representative capacity (except wills or testamentary dispositions or instruments of trust

serving purposes similar to those of a will), but any charge made for the legal work connected with preparing and drawing such document shall not exceed the amount paid to and received and retained by such attorney, and such attorney shall not directly or indirectly rebate the same to or divide the same with such corporations; and shall not prohibit any person or corporation from drawing, for or without a fee, farm or house leases, notes, mortgages, chattel mortgages, bills of sale, deeds, assignments, satisfactions or any other conveyances except testamentary dispositions and instruments of trust; and shall not prohibit a licensed attorney at law of Minnesota from rendering to a corporation legal services to itself at the expense of one or more of its bona fide principal stockholders by whom he is employed and by whom no compensation is directly or indirectly received for said services, and shall not prohibit any person or corporation engaged in the business of making collections from engaging or turning over to an attorney at law for the purpose of instituting and conducting suit or making proof of claim of a creditor in any case in which the attorney at law receives the entire compensation for such work, and shall not prohibit any regularly established farm journal or newspaper, devoted to general news, from publishing a department of legal questions and answers thereto, made by a licensed attorney at law, if no such answer be accompanied or at any time preceded or followed by any charge for such answer, any disclosure of any name of the maker of any answer, any recommendation of or reference to anyone to furnish legal advice or services, or by any legal advice or service for such periodical or any one connected with it or suggested by it, directly or indirectly.

(d) It shall be unlawful to exact, charge or receive any attorney's fee for the foreclosure of any mortgage, unless the foreclosure is conducted by a licensed attorney at law of Minnesota and unless the full amount charged as attorney's fee is actually paid to and received and retained by such attorney, without being directly or indirectly shared with or rebated to anyone else, and it shall be unlawful for any such attorney to make any showing that he has received such a fee unless he has received the same or to share with or rebate to any other person, firm or corporation such fee or any part thereof received by him; but such attorney may divide such fee with another licensed attorney at law maintaining his own place of business and not an officer or employee of the foreclosing party, if such attorney has assisted in performing the services for which the fee is paid, or resides in a place other than that where the foreclosure proceedings are conducted and has forwarded the case to the attorney conducting such foreclosure.

It shall be unlawful for any corporation, appearing as executor, administrator, guardian, trustee or other representative, to do the legal work in any action, probate proceeding or other proceeding in any court in this state, except through a licensed attorney at law of Minnesota maintaining his own place of business and not an officer or employee of such executor, administrator, guardian, trustee or representative. No attorney's fee shall be charged or paid or received in any such case, unless actually paid to and received and retained by such an attorney at law maintaining his own place of business and not an officer or employee of such executor, administrator, guardian, trustee or representative; and it shall be unlawful for such attorney to represent in any manner that he has received any sum as a fee or compensation unless the same has been actually received by him, or directly or indirectly to divide with or rebate to any person, firm or corporation any part of any such fee or consideration received by him in any such case; but such attorney may divide

such fee with another licensed attorney at law maintaining his own place of business, and not an officer or employee of such executor, administrator, guardian, trustee or other representative, if such attorney has assisted in performing the services for which the fees are paid, or resides in a place other than that where the action or proceedings are conducted and has forwarded the case to the attorney conducting the action or proceedings.

(e) Any person or corporation or officer or employee thereof violating any of the foregoing provisions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as by statute provided for the punishment of misdemeanors. It shall be the duty of the respective county attorneys in this state to prosecute violations of this act, and the district courts of this state shall have sole original jurisdiction of any such offense under this act.

In lieu of criminal prosecution above provided for, such County Attorney or the Attorney General may, in the name of the State of Minnesota, or in the name of the State Board of Law Examiners, proceed by injunction suit against any violator of any of the provisions above set forth to enjoin the doing of any act or acts violating any of said provisions.

(f) Any attorney or counsellor at law residing in any other state or territory wherein he has been admitted to practice law, who shall attend any term of the supreme or district courts of this state for the purpose of trying or participating in the trial or proceedings of any action or proceedings there pending may, in the discretion of the court before whom he appears in such action or proceeding, be permitted to try, or participate in the trial or proceedings in, such action or proceeding, without being subject to the provisions of this act, other than those set forth in sub-division (b) above.

(g) Any person who prior to the passage of this act has served eight years or more as Judge of any Municipal Court in this State, and who for twenty years or more, prior to the passage of this act, has performed legal services in the Probate Courts of this state for himself, while acting as administrator, executor or guardian, shall be permitted to practice in any Municipal Court of this state, and also to perform necessary legal services in any Probate Court of this state for himself while acting as administrator, executor or guardian.

(h) Nothing herein contained shall be construed to prevent a corporation from furnishing to any person lawfully engaged in the practice of law, such information or such clerical service in and about his professional work as, except for the provisions of this section, may be lawful, provided that at all times the lawyer receiving such information or such services shall maintain full, professional and direct responsibility to his clients for the information and services so received. (Act Apr. 4, 1931, c. 114, §1.)

In a criminal prosecution before a justice of the peace or in municipal court in a misdemeanor case, a forest ranger or patrolman may assist in presenting the evidence in behalf of the state by examination of the witnesses. Op. Atty. Gen., May 27, 1931.

Home owners' protective bureau soliciting cases of persons desiring to obtain benefit of mortgage moratorium law is guilty of a crime. Op. Atty. Gen., Aug. 22, 1933.

5687-2. Law repealed.—Section 5687, General Statutes 1923, is hereby repealed. (Act Apr. 4, 1931, c. 114, §2.)

5687-3. Provision separable.—In case any section, subdivision, paragraph or sentence of this act is declared unconstitutional, that shall not affect the validity of the rest of this act. (Act Apr. 4, 1931, c. 114, §3.)

5687-4. Effective July 1, 1931.—This act shall take effect and be in force from and after July 1, 1931, but shall not affect any action or proceeding now pending in any court. (Act Apr. 4, 1931, c. 114, §4.)

5687-5. Attorneys shall not employ solicitors.—No attorney-at-law shall, through any runner, agent or person not an attorney-at-law who is employed by him, solicit a person to employ such attorney to present a claim for damages for personal injuries or for death, or to prosecute an action to enforce such a claim, and no attorney-at-law shall directly or indirectly give or promise to any such person other than an attorney-at-law any money, fee or commission in consideration of the employment of such attorney by a person having a claim for personal injuries or for death, or soliciting or procuring such person who has such claim to employ such attorney to present such claim or to prosecute an action for the enforcement thereof. (Act Apr. 23, 1929, c. 289, §1.)

Attorney employing other attorneys to solicit personal injury actions was guilty of unethical and unprofessional conduct. Greathouse, 248NW735. See Dun. Dig. 678.

5687-6. Soliciting of business by persons other than attorneys unlawful.—It shall be unlawful for any person not an attorney-at-law to solicit for money, fee or commission, in any manner whatsoever, any demand or claim for personal injuries or for death for the purpose of having an action brought thereon for the purpose of settling the same. Nothing in this act shall be construed to prevent any bona fide labor organization or any member thereof from advising or securing advice for any member of such organization in regard to his rights. (Act Apr. 23, 1929, c. 289, §2.)

5687-7. Violation a misdemeanor.—(a) Any attorney-at-law who shall violate Section 1 hereof shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$50, nor more than \$100, or imprisonment in the county jail for not more than 90 days.

(b) Any person who shall violate Section 2 [5687-6] hereof shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$50, nor more than \$100, or by imprisonment in the county jail for not to exceed 90 days. (Act Apr. 23, 1929, c. 289, §3.)

5687-8. Certain statements shall be presumed to be fraudulent.—(a) Any statement secured from an injured person at any time within 30 days after such injuries were sustained shall be presumably fraudulent for use in the trial of any action for damages for injuries sustained by such person or for the death of such person. (Act Apr. 23, 1929, c. 289, §4.)

There is no law regarding statements taken from witnesses to accidents. Op. Atty. Gen., Feb. 15, 1933.

5687-9. This act shall take effect and be in force from and after December 31, 1929. (Act Apr. 23, 1929, c. 289, §5.)

5688. General duties.

Fact that defendant attorney had contracts with his clients for contingent fees did not render his contract with plaintiff investigator champertous or illegal. 171 M384, 214NW276.

Attorney could not recover for legal services where there was no express contract therefor, nor a contract to be implied from the facts. 176M498, 223NW786.

Attorney guilty of fraud and bad faith toward his client is not entitled to compensation. 180M493, 231NW410.

Though an attorney may be guilty of misconduct in establishing his case by his own testimony, such testimony is competent. 181M45, 231NW414.

A contract between lawyers having claims against embarrassed corporations to share the fees which one should receive as attorney for the receiver of such corporations is against public policy, where the purpose of the arrangement was to throw such corporations into the hands of a receiver and profit by the fees allowed the receiver and his attorney. Anderson v. G., 183M472, 237 NW9. See Dun. Dig. 1870, 1871.

In action between attorneys growing out of alleged secret profits, finding of settlement and accounting held sustained by evidence. Diesen v. C., 184M400, 238NW785. See Dun. Dig. 698a.

An attorney cannot, with propriety, advertise his talent, skill and ability. Greathouse, 248NW735.

An attorney is not an officer of the state in a constitutional or statutory sense, but is an officer of the

court exercising a privilege during good behavior. *Great-house*, 248NW735. See Dun. Dig. 664.

Subd. 5—Volunteering information on the witness stand. 171M492, 214NW666.

5689. Penalties for deceit, etc.

This section trebles damages in actions therein referred to, but does not create any new cause of action. 181M322, 223NW515. See Dun. Dig. 674.

5690. Authority.

Knowledge of a written assignment of a contract for deed by the vendee cannot be imputed to the vendors from the fact that their attorney drew the assignment. 175M502, 221NW871.

Fact that contract with plaintiff's attorneys is champertous and void, or that the attorneys have been guilty of unprofessional conduct, is not ground for dismissing the action. 177M1, 223NW291.

Sole heir having ratified settlement of claim, authority of attorney representing him cannot be questioned. *Parker's Estate*, 178M409, 227NW426.

On summary proceedings, held that court properly refused to require attorney to repay fees when discharged. *Selbert v. S.*, 186M274, 243NW59. See Dun. Dig. 666.

Parties are bound by stipulation as to amount of liability if any liability exists. *Collins v. M.*, 187M514, 246NW5. See Dun. Dig. 9004.

5695. Lien for attorneys' fees extended.

Retaining lien of attorneys on money paid in settlement is not divested merely by an order of court entitling the client to a vacation of the settlement. 173M141, 216NW793.

The fixing and allowance of fees of an attorney for a receiver are largely in the discretion of the trial court and will not be disturbed except for an abuse of such discretion. 173M619, 216NW784.

Defendant is charged with constructive notice of lien of plaintiff's attorney, and though plaintiff and defendant may settle the litigation, such settlement would be subject to the lien of the attorney, for the amount of which the defendant would be liable; and defendant could not interpose a collusive judgment obtained in another state to defeat the attorney's lien. 47F(2d)112. See Dun. Dig. 710.

Where the action was dismissed because of such settlement the attorney was entitled to have the judgment vacated, with leave to intervene for the purpose of enforcing the lien. 47F(2d)112. See Dun. Dig. 710.

Expenses incurred by attorney is part of his "compensation" within the meaning of this section. 47F(2d)112. See Dun. Dig. 706.

Subdivision 1 is declaratory of common law. 33F(2d)1001.

Under subdivision 2, attorneys had lien on money recovered in settlement of suit commenced by bankrupt before adjudication for all services theretofore rendered. 33F(2d)1001.

Attorneys fees of \$21,000 were allowed in litigation involving trust property of \$2,730,000. *Butler v. B.*, 183M218, 235NW918. See Dun. Dig. 701.

An order, upon an order to show cause submitted upon affidavits determining right of respondent to an attorney's lien and the amount thereof, held a final order and appealable. *Canfield v. J.*, 183M503, 237NW190. See Dun. Dig. 302.

Attorney suing for compensation held not to have shown authority of son of defendant to settle case and thereby fix basis for recovery of contingent fee. *Dell v. M.*, 184M147, 238NW1. See Dun. Dig. 706.

An attorney has a lien upon the cause of action of his client from the time of the commencement of the action to enforce it; and, if his client settles with the defendant, he may adopt the amount of the settlement as the basis upon which to determine the amount of his recovery. *Dell v. M.*, 184M147, 238NW1. See Dun. Dig. 706(13).

In an attorney's lien proceeding, it is too late to object, for the first time on appeal, that the lien claimant was not an attorney of record and so not entitled to a lien in any event. *Meacham v. B.*, 184M607, 240NW540. See Dun. Dig. 384(39).

In an attorney's lien proceeding, it was proper for the trial court, in order to render a judgment determinative of the whole controversy, to order in as an additional party an attorney admittedly entitled to share in the fund subject to the lien. *Meacham v. B.*, 184M607, 240NW540. See Dun. Dig. 712, 7325.

An attorney not of record in an action may be entitled to a lien. *Meacham v. B.*, 184M607, 240NW540. See Dun. Dig. 703.

5696. Refusal to surrender property to clients.

Order for impounding attorneys' fees and requiring client to give security pending determination of distributive shares of several attorneys, held not appealable. 180M30, 230NW113.

Evidence held to show funds in attorney's hands which court rightly ordered him to turn over to clients. *Gerlich v. R.*, 184M346, 238NW640.

5697. Removal or suspension of attorney.—1. * * *

(A) Upon his being convicted of a felony, or of a

misdeemeanor involving moral turpitude; in either of which cases the record of conviction shall be conclusive evidence—, but this section shall not be construed to apply to a conviction for contempt of court. (As amended Mar. 14, 1933, c. 79.)

* * *

Attorney disbarred for making willful and known false representations to others than clients who, to his knowledge, trust to such representations. 171M437, 214NW652.

Professional misconduct warranting disbarment, and limitations on time to proceed for disbarment. 171M352, 214NW662.

Misappropriation of funds held to warrant disbarment. 171M434, 214NW663.

Deception of court and slanderous and contemptuous remarks by female attorney held ground for disbarment. 171M492, 214NW666.

Retention of bail money as fees held not to constitute misconduct requiring disbarment of attorney. 172M248, 215NW175.

Attorney receiving money from a client to be applied on a claim against the client, but failing to apply it, was disbarred. 172M158, 215NW191.

Attorney disbarred for withholding money of client. 172M347, 215NW425.

Attorney charged with having pleaded guilty to indictment for attempting to evade tax imposed by Revenue Act of 1921 (Mason's U. S. Code, Title 26, Chap. 30), should have opportunity to prove that offense was committed under circumstances not involving moral turpitude. 173M297, 215NW427.

Evidence held insufficient to justify disbarment of attorney on the ground of bad faith or intentional misconduct toward his client, though showing negligence in failing to ascertain state of account and to have proper settlement. 172M532, 216NW219.

Evidence held not to require disbarment. 173M274, 217NW142.

Conviction of attorney for attempt to evade federal income tax shows conviction of a "misdeemeanor involving moral turpitude." 173M297, 217NW356.

Attorney admitting specific charges of bribing public official and simply asking leniency on ground of previous good character, will be disbarred. *Erickson*, 175M626, 221NW724.

In a proceeding for discipline and disbarment of an attorney, he may be called for cross-examination under the statute. *Halvorson*, 175M520, 221NW907.

Attorney suspended for failing to promptly account for collections. *Halvorson*, 175M520, 221NW907.

Attorney fraudulently received property from bankrupt and aiding to conceal the same and in undertaking to get client to will farm to certain person, should be disbarred. 176M519, 223NW921.

Attorneys suspended for misconduct. 177M203, 225NW97.

Attorney receiving retainer and doing nothing, disbarred. *Redding*, 177M352, 225NW274.

Failure to account to client for money collected is ground for disbarment, and it is no defense that the client resort to disbarment proceeding to compel such accounting, and agrees to stop the proceeding if the money is paid. 178M547, 227NW892.

Suspension for 18 months imposed on attorney who pleaded guilty to grand larceny in second degree while acting in capacity other than attorney. *Neumeister*, 180M146, 230NW487.

Misapplication of money of clients, held ground for disbarment. 180M148, 230NW582.

Attorney disbarred for misappropriating his client's money. *Kahner*, 180M556, 231NW233(1).

Attorney disbarred for conviction of crime against United States. *Beach*, 180M557, 231NW421(1).

Concealing collection and misappropriating client's money, held ground for disbarment. 181M65, 231NW396.

Attorney held guilty of misconduct in taking employment with a bank on a salary basis and agreeing with the bank that his fees as an attorney shall belong to the bank. 181M254, 232NW318. See Dun. Dig. 664.

Entire failure to act in making collections and to answer correspondence, held ground for disbarment. *Scott*, 181M230, 232NW108. See Dun. Dig. 678.

Use of criminal process by county attorney to collect civil claims was misconduct requiring discipline. *Joyce*, 182M156, 234NW9. See Dun. Dig. 678, 2307.

The embezzlement of funds coming into the hands of respondent, an attorney at law, as guardian of incompetent ex-service men, he evidently having been appointed such guardian because of being an ex-service man and a lawyer, justifies no other discipline than disbarment. *Fitz Gibbons*, 182M373, 234NW637. See Dun. Dig. 678.

Attorney convicted of compounding a crime was disbarred. *Ostensoe*, 183M99, 235NW521. See Dun. Dig. 678(94).

A lawyer's conviction of a felony is ground for disbarment. *Nelson*, 183M140, 235NW675. See Dun. Dig. 678(94).

An attorney who appropriates his client's money and neglects to protect the client's interests, and who, when called to account, seeks by falsehood to hide his wrong-

doing, should be permanently disbarred. Smith, 183M 220, 236NW324. See Dun. Dig. 678(95).

Findings of the referee as to misappropriation by an attorney of funds entrusted for investment, of perjury, and of knowingly filing in public offices forged instruments, require his disbarment. Friedman, 183M350, 236 NW703. See Dun. Dig. 678.

Record held not to bring out clearly any of the charges to be barred by the limitation provision of this section. Friedman, 183M350, 236NW703. See Dun. Dig. 679a(7).

Questions of constitutionality of a statute or of conflict between legislative and judicial authority over the admission and disbarment of attorneys should not be determined, except upon adequate legal argument and only when essential for a decision of the case before the court. Friedman, 183M350, 236NW703.

Attorney admitting that he appropriated and converted money belonging to the estate of an insane person was disbarred. Tollefson, 183M349, 237NW192. See Dun. Dig. 678(95).

Attorney's systematic withdrawals of funds belonging to ward whose guardian he was for his own personal use held to require disbarment. In re Westphal, 183M 568, 237NW598. See Dun. Dig. 678.

A lawyer's embezzlement of his client's funds commands discipline. In re Smith, 184M87, 237NW877. See Dun. Dig. 678.

Finding that attorney failed to account to his clients for money collected held sustained by evidence. Moerke, 184M314, 238NW690. See Dun. Dig. 680.

Misconduct of an attorney towards others than clients may be such as to require removal of the attorney from his office. Moerke, 184M314, 238NW690. See Dun. Dig. 678(95).

Referee's finding that attorney was guilty of misconduct in converting bail money while acting as a United States court commissioner held supported by evidence. Moerke, 184M314, 238NW690. See Dun. Dig. 680.

The misconduct here complained of was continuing misconduct, as held in the Cherry Case, 166 Minn. 448, 208 N. W. 197, 45 A. L. R. 1108, and later cases, and the proceeding for discipline was not barred by this section. Moerke, 184M314, 238NW690. See Dun. Dig. 678(95).

Attorney's conduct in manner of dealing with other attorneys disapproved. Gurley, 184M450, 239NW149. See Dun. Dig. 678.

Lawyer obtaining money by falsely representing that charges for violation of liquor laws had been filed was disbarred. Chisholm, 185M326, 241NW53. See Dun. Dig. 678.

Appropriating and using for his own purposes moneys of different clients, and even indorsing names of payees, of checks and warrants, without authority, in order to obtain money of such payees, must result in disbarment of attorney. In re Manahan, 186M98, 242NW548. See Dun. Dig. 678.

Attorney should not be disciplined for failure to pay over money where he, in good faith, considered that he was not agent or attorney for complaining party. In re Hughes, 186M204, 242NW711. See Dun. Dig. 678.

Attorney guilty of "racketeering" should be disbarred. In re Moses, 186M357, 243NW386.

Evidence held to sustain finding that attorney retained money of clients in bad faith. Gerlich, 187M88, 244NW 414.

Misconduct of attorney in retaining moneys of clients was continuing, and disbarment was not barred by statute of limitations. Gerlich, 187M88, 244NW414.

Findings and order of district court in summary proceedings were properly received in evidence in disbarment proceedings. Gerlich, 187M88, 244NW414.

Delay of attorney in paying inheritance tax for client, held insufficient to require discipline. Jelle, 187M140, 244NW548. See Dun. Dig. 678.

Attorney failing to account to client for money should be disbarred. Larson, 187M427, 245NW626. See Dun. Dig. 678.

Attorney convicted of felony was disbarred. Bell, 246 NW467. See Dun. Dig. 678.

A lawyer's conviction of a felony calls for disbarment. Sachs, 246NW662. See Dun. Dig. 678.

Attorney pleading guilty to grand larceny in second degree was disbarred. Smith, 246NW921. See Dun. Dig. 678(94).

Attorney who had an unexplained shortage as administrator of an estate was disbarred. Evan Hughes, 247NW680. See Dun. Dig. 678(95).

Failure to promptly account to client for moneys and to respond to letters from bar associations calls for disbarment. Breding, 247NW694. See Dun. Dig. 678(95).

Convictions of contempt of United States district court is not a conviction of a felony or of a misdemeanor involving moral turpitude. Conley, 248NW41. See Dun. Dig. 678(94).

An attorney who receives money from his client to apply to a specific purpose mingles it with his own funds, and fails to apply it as directed should be subjected to discipline. Solem, 248NW212. See Dun. Dig. 678(95).

Misappropriation of funds collected, held to require disbarment. Severson, 248NW293. See Dun. Dig. 678(95).

Privilege given an attorney to practice is always subject to revocation for cause. Greathouse, 248NW735. See Dun. Dig. 678.

Supreme court is not confined or limited to particular statutory grounds for disbarment of an attorney. Id.

Attorney failing to account for client's funds and failing to answer letters was disbarred. Bodin, 249NW 569. See Dun. Dig. 678.

Attorney having agents engaged in solicitation of cases of persons desiring to obtain benefit of mortgage moratorium law is subject to discipline and disbarment. Op. Atty. Gen., Aug. 22, 1933.

ARCHITECTS, ENGINEERS AND SURVEYORS

5697-1. Registration required.—In order to safeguard life, health and property, any person practicing or offering to practice as an architect, a professional engineer or land surveyor in this State shall hereafter be required to submit evidence that he is qualified so to practice, and shall be registered as hereinafter provided; and from and after six months after this Act becomes effective, it shall be unlawful for any person to practice or to offer to practice in this State as in architect, a professional engineer (hereinafter called engineer) or a land surveyor except under the provisions of this Act. No person shall practice or offer to practice as an architect, engineer or land surveyor, nor accept employment for compensation, in responsible charge of the preparation of plans and specifications for building, engineering or surveying work in this State unless he shall have registered under the terms of this Act, except that the provisions of this Act shall not apply to practice with regard to any single family or two family dwelling nor to any farm dwelling or building accessory thereto, nor to any building work the total cost of which does not exceed \$7,500, nor to the erection, enlargement or alteration of any building or structure, by any person, firm or corporation, or the employees thereof, exclusively for his or its own occupancy and/or use, nor to any building or the plans or specifications therefor when such plans and specifications are prepared by an established contractor or builder in negotiating for employment as such or in detailing his proposal to or agreement with a person for whom he proposes to build as a contractor or builder or for use in obtaining a building permit in connection with such constructing or building work and that the same are signed by the authors thereof with a true statement of their relation to such construction and not as architects or engineers. ('21, c. 523, §1; Apr. 22, 1933, c. 404, §1.)

This section is not included in the title of the act. The title reads: "An act to amend Laws 1921, Chapter 523, sections 2, 9, 12, 13 and 14, relating to the practice of architecture, professional engineering and land surveying."

Op. Atty. Gen., June 28, 1933; note under §5345.

Under this section, as amended by Laws 1933, c. 404, any engineer or land surveyor in responsible charge of accuracy and completeness of any particular phase of work must be registered. Op. Atty. Gen., Sept. 12, 1933.

5697-2. Persons required to register—Titles which may be used.—No person shall represent himself as, or use the title of, "Registered Architect," "Registered Professional Engineer" or "Registered Land Surveyor," unless such person is qualified by registration under this act.

No person, except an architect, engineer or land surveyor registered as provided for in this act, shall be employed in responsible charge of the preparation of plans or specifications for any public work or public improvement in this state or in responsible charge or supervision of architectural, engineering or land surveying for any public work or public improvement in this state.

No plat, map or drawing of any survey or subdivision of lands required by law to be filed or recorded with the register of deeds or registered with the registrar of titles of any county, shall be filed, recorded or registered therein unless there shall be endorsed thereon a certificate by a registered land surveyor.

The provisions hereof shall not apply to any person holding an elective office when in discharging

the duties thereof such person is required to do work or perform service of the character of work or service usually done or performed by an architect, engineer or land surveyor. ('21, c. 523, §2; Apr. 22, 1933, c. 404, §1.)

5697-9. Certificates of registration.—The Board shall, on application therefor, on prescribed form and the payment of a fee of not to exceed Ten Dollars (\$10.00) issue a certificate of registration as an architect or an engineer, and on the payment of a fee of not to exceed Five Dollars (\$5.00) issue a certificate of registration as a land surveyor;

1. To any person over twenty-five (25) years of age, who is a citizen of the United States or Canada, or who has made declaration of his intention to become a citizen of the United States; who speaks and writes the English language; who is of good moral character and repute, and has been actively engaged either as an employer or an employee for five or more years in the practice of architecture or engineering, or engaged for four or more years in surveying work. The character of such practice or work shall be equal to the standards fixed by the Board. Each year of teaching or of study satisfactorily completed, of architecture, engineering or surveying in a school of architecture or engineering of a standard recognized by the Board, shall be considered as equivalent to one year of such active engagement.

2. To any person who holds a like unexpired certificate of registration issued to him by proper authority in the District of Columbia, in any state or territory of the United States, or in any province of Canada, in which the requirements for registration of architects, engineers or land surveyors are equal to those fixed by the board for this state, and in which similar privileges are extended to the holders of certificates of registration issued by this state.

3. To any person who prior to the passage of this act resided in this state and practiced as an architect, engineer or as a land surveyor.

When the evidence presented by an applicant for a certificate of registration shall not be conclusive or convincing as warranting the issuance of a certificate, the Board may require further evidence to be presented, or may subject the applicant to such examination as may be deemed necessary to establish his qualifications.

In determining the qualifications in such cases of applicants for registration as architects, a majority vote of the architect members of the Board only shall be required; in determining the qualifications in such cases of applicants for registration as engineers a majority vote of the engineer members of the Board only, shall be required; and in determining the qualifications of applicants for registration as land surveyors the affirmative vote of the land surveyor member and of one engineer of the Board only, shall be required.

The board may make reasonable rules and regulations for classifying and registering engineers in divisions according to their qualifications to practice different classes of engineering work and shall, in such case, register qualified applicants in one or more such divisions in which they shall qualify under the terms of this act and shall, in any event, provide one such division for highway engineers.

Any person so qualified may be registered in two or all of the three professions covered by this act; but the aggregate fee for such registration shall not exceed \$15.00.

In case the Board denies the issuance of a certificate to an applicant, the registration fee deposited shall be returned by the Board to the applicant.

Certificates of registration shall expire on the last day of the calendar year for which they are issued and shall become invalid on that date unless renewed. It shall be the duty of the secretary-treasurer of the Board to notify, by mail, every per-

son registered hereunder of the date of the expiration of his certificate and the amount of the fee required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month of December by the payment of a fee of \$3.00 for an architect or any engineer, and \$1.00 for a land surveyor.

The failure on the part of any registrant to renew his certificate annually in the month of December as required above shall not deprive such person of his right of renewal thereafter, but the fees to be paid for the renewal of the certificate after the succeeding first day of January shall be Five (\$5.00) Dollars for an architect or an engineer, and Two (\$2.00) Dollars for a land surveyor. The aggregate fee for renewal of registration in two or three of the professions shall be the same as the single renewal fee for registration as an architect or an engineer. ('21, c. 523, §9; Apr. 22, 1933, c. 404, §2.)

Rule of State Board of Registration for architects, etc., requiring that Class 1 of registrants, who may be licensed without examination, comprise only those who can show that they have been actively engaged for six or more years prior to October 25, 1921, is in conflict with the provisions of this subdivision. Op. Atty. Gen., Sept. 25, 1931.

Board is required to register those who are already in practice without examination, under Laws 1933, c. 404. Op. Atty. Gen., May 10, 1933.

5697-10. Revocation of certificates of registration, etc.

No specific duties rest upon building inspectors to enforce this act. Op. Atty. Gen., Oct. 9, 1933.

5697-12. Offenses.—Any person who is not authorized to practice in this State as an architect, an engineer or a land surveyor under the provisions of this Act and shall so practice or offer so to practice, and any person presenting or attempting to file as his own the certificate of registration of another, or who shall give false or forged evidence of any kind to the Board, or to any member thereof, for the purpose of obtaining a certificate of registration, or who shall falsely impersonate any other practitioner, of like or different name, or who shall use or attempt to use an expired or revoked certificate of registration, shall be deemed guilty of a misdemeanor. ('21, c. 523, §12; Apr. 22, 1933, c. 404, §3.)

5697-13. Persons exempt from registration.—The following shall be exempted from the provisions of this Act:

1. Practice as an architect, an engineer or a land surveyor in this State by any person not a resident of and having no established place of business in this State, or any person resident in this State, but whose arrival in the State is recent; provided, however, such person shall have filed an application for registration as an architect, an engineer or a land surveyor and shall have paid the fee provided for in Section 9 of this Act. Such exemption shall continue for only such reasonable time as the Board requires in which to consider and grant or deny the said application for registration; and provided such person is legally qualified to practice such profession in his own state or county in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this act.

2. Practice as an architect, an engineer or a land surveyor by any person not a resident of, and having no established place of business in this State, as a consulting associate of an architect, an engineer or a land surveyor registered under the provisions of this Act; provided the non-resident is qualified for such professional service in his own State or country.

3. Practice as an architect, an engineer or a land surveyor solely as an officer or as an employee of the United States. ('21, c. 523, §13; Apr. 22, 1933, c. 404, §4.)

5697-14. Corporations and partnerships.—A corporation or partnership may engage in work of an

architectural or engineering character, or in land surveying, in this State, provided the person or persons connected with such corporation or partnership in responsible charge of such work is or are registered as herein required of architects, engineers and land surveyors, or is or are otherwise authorized or permitted to practice as an architect, engineer or land surveyor. The same exemptions shall apply to corporations and partnerships as apply to individuals under this Act. ('21, c. 523, §14; Apr. 22, 1933, c. 404, §5.)

5697-16. May appeal to district court.—Any person aggrieved by any ruling or order of the Board made under the provisions of this act, may appeal therefrom to any district court of the state by serving written notice of such intention upon the secretary of the board, specifying such court, within thirty days after the same is made. The secretary of the board shall thereupon file with the clerk of such court a certified copy of the order or rulings or findings of fact upon which the same are based, which shall be prima facie evidence of the facts therein stated. Thereupon the court shall summarily hear and determine the questions involved on said appeal, such ruling or order of the board shall be stayed pending the said appeal. (Act Apr. 22, 1933, c. 404, §6.)

5697-17. Effective July 1, 1933.—This Act shall take effect and be in force from and after its passage but registrations required hereunder by persons heretofore practicing in this state may be made at any time before July 1, 1933. (Act Apr. 22, 1933, c. 404, §7.)

CERTIFIED ACCOUNTANTS

5698. Board of accountancy.

Audit of affairs of municipality by certified public accountants may not be accepted in lieu of examination to be made by public examiner under Laws 1929, c. 259, §2. Op. Atty. Gen., June 16, 1932.

5700. Certificates granted to whom.—No certificate for a certified public accountant shall be granted to any person other than a citizen of the United States, or person who has in good faith duly declared his intention of becoming such citizen, and is over the age of twenty-one years and of good moral character and (except under the provisions of Section 4 (5701) of this act) who shall have successfully passed an examination in "Accounting," "Auditing" and "Commercial Law," affecting accountancy, and on such other subjects as the board may deem advisable. No person shall be permitted to take such examination unless he shall for a period of at least three years have been employed in the office of a "public accountant" as an assistant, or shall have been practicing as a public accountant on his own account, or who shall have served for a like time as chief examiner or a senior examiner in the office of State Comptroller, or as an Internal Revenue agent or collector of the Bureau of Internal Revenue of the United States of America shall have for a like time engaged in auditing the income tax returns of any person, co-partnership, corporation or fiduciary, and who shall not at least three years prior to the date of said examination have successfully passed an examination in such subjects as may be prescribed by the board, touching his general education, qualification and fitness for an accountant; provided, that said board may, in its discretion, waive the preliminary examination of an applicant who, in its opinion, has had a general education equivalent to that which may be prescribed by its rules and is otherwise qualified. ('09, c. 439, §3; G. S. '13, §4964; Apr. 13, 1933, c. 236.)

5704. Revocation and reinstatement of certificates of certified public accountants.—Said state board of accountancy may revoke any certificate issued under this Act or may cancel the registration of any certificate issued under this Act for bad moral character, dishonesty, conviction of crime, incompetency or un-

professional conduct; provided, a written notice shall have been mailed to the holder of such certificate at least twenty days before any hearing thereon, stating the cause for such contemplated action and appointing a time and place for a hearing thereon by the state board of accountancy, and further provided, that no certificate issued under this Act shall be revoked until an opportunity for such hearing shall have been afforded. At all such hearings, the attorney general of this state, or one of his assistants designated by him, shall attend. Certificates issued or registered under this Act shall be surrendered to the state board of accountancy on their revocation by said board.

Said state board of accountancy may reinstate a revoked certificate upon a petition for reinstatement by the former holder thereof presented within two years after the date of revocation. Said board of accountancy shall appoint a time and place for the hearing on such petition and may prescribe any necessary rules and regulations relating to such reinstatement of a revoked certificate not inconsistent with any provisions of the statutes relating to public accountancy. ('09, c. 439, §7; G. S. '13, §4968; Apr. 15, 1933, c. 283.)

There should be a written complaint, notice to defendant and formal hearing. Op. Atty. Gen., Oct. 20, 1933.

Section does not authorize board to dispose of cases with a reprimand. Id.

BASIC SCIENCES AND PRACTICE OF HEALING

5705-1. Basic sciences defined—Practicing, etc.

For application of this act to persons licensed under act regulating massage, see Laws 1929, c. 347, §15, post, §5784-27.

This act is constitutional. 181M341, 232NW517. See Dun. Dig. 1675, 7483(26).

This act does not apply to chemistry until after the expiration of the calendar year 1931. Op. Atty. Gen., Mar. 24, 1930.

5705-5. Same—Organization—Officers—General powers, etc.

Board has right to sell copies of past examination questions to prospective examinees at cost. Op. Atty. Gen., May 27, 1933.

5705-9. Certificates without examination to practitioners from other states, etc.

Reciprocity is permissible with a state giving an examination which the board is satisfied deals with subject matter substantially the same as that in our examination, although the names of the subjects may not be identical with the names of the parts of our examination. Op. Atty. Gen., Sept. 11, 1931.

PRACTICE OF HEALING

5705-24. Healers, etc., to report defective children.

—Every duly licensed person practicing the art of healing in any way and every person diagnosing human ailments within the state who shall attend or treat any child of pre-school age or of school age who is not attending school, and every such person who observes any such child in a family in which he attends or treats any person for any cause, shall report directly to the state department to which communicable diseases are required to be reported, any defect, injury or disease of a continuous nature or which might permanently handicap the child, and which comes under his/her observation provided such child is not under the age of one year. He/she shall also particularly indicate those cases in which the parents or guardian of the child have not the knowledge or means necessary to insure all necessary treatment of the child. Provided, if there be filed with the clerk or secretary of such department a certificate of a reputable physician of the community that a defect, injury or disease of a child is incurable or is being cared for, further compliance with the provisions of this act with respect to such defect or handicap shall not be required. (Act Apr. 24, 1929, c. 328, §1.)

5705-25. Reports to be available to Children's Bureau.

—Such reports shall be made available to the children's bureau and such children's bureau shall

disseminate information designed to prevent the permanent crippling or handicapping of children. (Act Apr. 24, 1929, c. 328, §2.)

5705-26. State Board of Health to furnish blanks.—The state board of health shall formulate and furnish to such persons blanks on which such reports may be made. (Act Apr. 24, 1929, c. 328, §3.)

PHYSICIANS AND SURGEONS

5706. Board of medical examiners.

Board has no power to suspend a license. Op. Atty. Gen., Aug. 23, 1929.

The compensation of the secretary-treasurer and the stenographer to such secretary contemplated by section 5712 is within the control of the commission of administration and finance under Mason's Statutes, §53-7. Op. Atty. Gen., Oct. 16, 1929.

There is no incompatibility between the office of health officer of the City of Sauk Center on the one hand and a member of state board or state employment on the other hand. Op. Atty. Gen., Mar. 10, 1931.

A member of State Board of Medical Examiners may accept employment as a physician and surgeon by the State Board of Control for the care and treatment of inmates for the home school for girls. Op. Atty. Gen., Mar. 10, 1931.

5707. Examination and license—Revocation.

Professional care and skill required of physician. 174 M574, 219NW941.

Malpractice. Gamradt v. D., 176M312, 223NW296. Two year statute of limitations does not begin to run against malpractice suit until end of treatment. 178M482, 227NW432.

Physicians, held negligent in treating a fractured knee cap, and measure and amount of damages determined. 181M381, 232NW708. See Dun. Dig. 7489, 7493.

A physician's professional acts, and the necessity and propriety thereof, are to be tested by the evidence of those who are trained and skilled in his particular school of medicine. 181M590, 233NW317. See Dun. Dig. 7494(19).

In the absence of expert medical testimony, the evidence was insufficient to support a finding that the attending doctor negligently failed to properly diagnose the patient's condition. 181M590, 233NW317. See Dun. Dig. 7496.

The evidence was insufficient to establish the causal connection between physician's alleged negligence and the necessity for an operation had seven months later. 181M590, 233NW317. See Dun. Dig. 7491a.

Instruction of court in malpractice case as to when treatment ceases held erroneous. Schmit v. E., 183M354, 236NW622. See Dun. Dig. 7488b(62).

When a physician is employed generally to treat and heal an injury, he owes the duty of continued care and treatment. Schmit v. E., 183M354, 236NW622. See Dun. Dig. 7488b(62).

Negligent failure to treat an injury, at a time when the need of treatment is known to the physician and there is opportunity to apply proper treatment, amounts to the same as negligent treatment. Schmit v. E., 183M354, 236NW622. See Dun. Dig. 7488.

So long as the relation of physician and patient continues as to the particular injury or malady which he is employed to cure, and there remains something for him to do in order to effect a cure, it cannot be said that the treatment has ceased; but if nothing further is to be done, and physician ceases to attend the patient in relation thereto, the treatment ordinarily ceases, without any formality. Schmit v. E., 183M354, 236NW622. See Dun. Dig. 7488b(62).

Fact that patient died after tonsil operation in which local anesthetic was used would not alone support finding of use of excessive anesthetic or poison. Johnson v. A., 186M253, 243NW67. See Dun. Dig. 7491.

Rule of res ipsa loquitur did not apply in action for death of one immediately after operation on tonsils. Johnson v. A., 186M253, 243NW67.

It is not necessary for plaintiff, in malpractice case, to have expert testimony to sustain his claim. Johnson v. A., 186M253, 243NW67.

5712. Duty of secretary—Money how paid—etc.

The compensation of the secretary-treasurer and his stenographer or assistant is within the control of the commission of administration and finance under §53-7 herein. Op. Atty. Gen., Oct. 16, 1929.

Opinion of June 28 with respect to reduction of salaries under Laws 1933, c. 413, §37, applies to secretary of board. Op. Atty. Gen., June 29, 1933.

5720. Revocation of license.

Board has no power to suspend a license. Op. Atty. Gen., Aug. 23, 1929.

CHIROPRACTORS

5725. Definition.

Chiropractor cannot practice chiropody as defined by §5769. Op. Atty. Gen., Sept. 16, 1929.

5730. Renewal fee—Fees to be paid to state treasurer—Report.

Board cannot use funds to send representative to Chiropractic Congress. Op. Atty. Gen., Aug. 9, 1929.

OSTEOPATHY

5736. Practice of osteopathy—Licenses—Penalties.

Extent of practice of osteopaths. Op. Atty. Gen., Aug. 14, 1929.

NURSES

5741. Registration.

Minnesota state registered nurses association has authority to receive relief funds from American nurses association for exclusive purpose of distributing relief to nurses. Op. Atty. Gen., June 23, 1933.

5745. Compensation of board of Nurses Examiners.

—Each member of said board, except the secretary, shall receive a compensation of not more than \$10.00 per day for each day of actual service, and actual expenses incurred in attending the meetings of the board, and examinations given by said board, which actual expenses shall include meals, lodging and travel, only. And in addition to the foregoing compensation and expenses each member of the board, except the secretary, shall be allowed such fee or fees for examining, marking and grading examination papers of applicants for registration as the said board shall deem reasonable, not to exceed, however, the sum of 40 cents for each paper so examined, marked and graded. Such board may also incur and pay all necessary expenses for office help and office expenses. Said board may fix the salary of its secretary and the educational director. Such salaries, compensation and expenses shall be paid out of any moneys in the hands of the state treasurer to the credit of said board upon the order of the secretary of the board. This act shall be subject to the provisions of Chapter 426, General Laws 1925 [§§53-1 to 53-52]. ('07, c. 153, §5; G. S. '13, §5003; '23 c. 148, §3; Apr. 12, 1929, c. 173.)

5747. Examinations—Notices—Fee—Qualifications.

—Said board shall hold public examination at least once in each year at such times and places as it may determine, and notice of the time and place of such examination shall be given by a publication thereof at least ten days before such examination, in a daily newspaper published at the capital of the state, and said board may give such other notice as it deems advisable. Any person desiring to obtain a certificate of registration under this act shall make application to said board therefor, and shall pay to the treasurer of said board an examination fee of \$15, and shall present himself or herself at the next regular meeting of said board for examination of applicants, and upon said board being satisfied that the applicant possesses the following qualifications:

- (1) Is of the age of twenty-one years or over,
- (2) Is of good moral character,
- (3) As to any applicant who presents himself or herself for examination on and after September 1, 1929, that such applicant has received an education equivalent to one year of high school, and as to any applicant who presents himself or herself for examination on and after September 1, 1935, that such applicant has received an education equivalent to two years of high school, provided, however, that the provisions of this subdivision shall not apply to those who have entered a school of nursing prior to September 1, 1929, but as to those persons the provisions of this subdivision as it stood prior to the amendment thereof shall remain applicable, and
- (4) Has graduated, or is within three months of graduating from a school of nursing connected with a general hospital where three years of training, with a systematic course of instruction is given; or has graduated, or is within three months of graduation from a school of nursing in connection with a hospital of good standing supplying a systematic three

years' training corresponding to the above standards, which training may be obtained in two or more schools of nursing, said board shall proceed to examine said applicant in both theoretical and practical nursing and upon such applicant passing said examination to the satisfaction of said board, said board shall enter said applicant's name in the register, hereinafter provided for, and shall issue to said person a certificate of registration authorizing said person to practice the profession of nursing as a registered nurse, provided, however, that any applicant who prior to the completion of the three year course of training required by this act passes said examination to the satisfaction of the board must, before he or she shall be granted a certificate of registration as a registered nurse present to the board satisfactory evidence that he or she has completed the full three years of training as required by this act. ('07, c. 153, §7; G. S. '13, §5005; '23, c. 148, §5; Apr. 15, 1929, c. 193.)

Under this section as amended by Laws 1929, c. 193, one who has passed the state board examination prior to completion of a three-year course of training is not entitled to a certificate of registration until she has completed the three years of training, it not being necessary or proper to issue a certificate to her and then revoke it. Op. Atty. Gen., July 5, 1930.

DENTISTS

5757. Board of dental examiners—Appointment.

Sections 5757 to 5760, herein, are valid. 47SupCt122.

5758. Same—Officers—Meetings—Etc.

Board is without authority to create office of assistant secretary, but this does not mean that board may not incur such expenses as may be necessary within limit of funds. Op. Atty. Gen., Jan. 2, 1930.

While there is no authority to appoint an assistant secretary at a salary in addition to that named in this section, there is no reason why the board may not incur such expense as may be necessary within the limit of the funds provided. Op. Atty. Gen., Jan. 2, 1930, Jan. 20, 1930.

Board members are not entitled to charge a flat rate of \$5 per day for meals and expenses. Op. Atty. Gen., Jan. 22, 1932.

Members of board were entitled to compensation on Sunday if actually engaged in the performance of their official duties, but not if resting from their labors. Op. Atty. Gen., Jan. 22, 1932.

Opinion of attorney general of June 28, applies to secretary with regard to reduction of salary under Laws 1933, c. 413, §37. Op. Atty. Gen., June 29, 1933.

5759. Practicing dentistry—Exceptions.

Jury held warranted in awarding damages against a dentist without testimony of medical experts, where instrument used to polish and trim bridge slipped and cut tissues at base of tongue. Ellering v. G., 248NW330. See Dun. Dig. 7486a, 7488, 7496(26).

5760. Examinations—Registration and license—Fees, etc.

Fee paid by one applying to take dental examination may not be refunded, though applicant leaves state and does not attend examination. Op. Atty. Gen., Mar. 1, 1933.

5761. [Repealed].

See §5763-2 herein.

5762. Annual fees—change of place of business—duplicate licenses.

Before the first of May in each year every licensed registered dentist shall pay to the board of dental examiners an annual registration fee of two dollars, and in default of such payment the board may, upon hearing and upon thirty (30) days' notice revoke the license of the dentist in default; provided that thirty (30) days before said May 1st written notice duly signed by the president or secretary of the board stating the amount and due date of said fee shall be sent by registered mail to each such licensed dentist; but the payment of such fee on or before the time of hearing, with such additional sum not exceeding five dollars (\$5.00), as may be fixed by the board shall excuse the default. The board may collect such fee by suit.

Every licensed dentist upon changing his place of business shall, within ten (10) days thereafter, furnish the Secretary of the Board of Dental Examiners with his new address. He shall not act as a dentist for more than ten days after so notifying the

Secretary unless he shall have received notice, which the Secretary shall send him, that the change is noted on the records of the Board.

In case of a lost license, and satisfactory proof of the loss or destruction thereof being furnished to the board, the latter may issue a duplicate license, charging a fee therefor of two dollars. (R. L. '05, §2318; '11, c. 221, §6; G. S. '13, §5020; '27, c. 98, §5, effective Jan. 1, 1928; Jan. 28, 1933, c. 8, §1.)

It is mandatory that the board revoke license where fee is not paid. Op. Atty. Gen., Apr. 18, 1929.

Dental board must send out notices when dues become due. Op. Atty. Gen., Sept. 6, 1933.

5763-2. Inconsistent acts repealed.—Section 5761 and all parts of acts insofar as the same are inconsistent herewith are hereby repealed. The various provisions of this Act shall be severable and if any part or provisions shall be held to be invalid it shall not be held to invalidate any other part or provisions hereof. (Act Mar. 4, 1931, c. 36, amending Laws 1927, c. 98.)

5766. Same—Fees.—Before the first of May in each year every licensed dental hygienist or nurse shall pay to the board of dental examiners a license fee of one dollar and in default of such payment, the board may upon hearing and upon thirty days' notice revoke the license of the hygienist or nurse in default; but the payment of such fee on or before the time of hearing, with such additional sum not exceeding five dollars as may be fixed by the board, shall excuse the default. The board may collect such fee by suit. ('19, c. 249, §3; '27, c. 93; Jan. 28, 1933, c. 8, §1.)

CHIROPODY

5769. Definition of the word "chiroprody."

It is lawful for a chiroprodist to advertise his offices as a "foot clinic." Op. Atty. Gen., Feb. 23, 1933.

5771. Registration of practitioners without examination.—Within thirty days after the enactment of this Act said board shall notify all persons engaged in the practice of chiroprody in this state, of the provisions of the Act, by publication in one or more newspapers in each county, and every practitioner of chiroprody, twenty-one years of age or over and of good moral character who shall make application for registration before the 1st day of July, 1917, and who can prove to the satisfaction of the board that he was engaged in the practice of chiroprody in this state January first, 1917, and any person over twenty-one years of age on the first day of January, 1917, of good moral character, who was engaged in the practice of chiroprody in this state on and prior to January first, 1917, and who continued such practice in the same city or town for a period of at least fifteen years thereafter in good faith, shall, upon payment of a fee of ten dollars, be registered without examination and shall receive in testimony thereof a certificate signed by the chairman and secretary of said board.

Application for registration shall be made upon blanks furnished by the board and shall be signed and sworn to by the applicant.

All fees received by the board shall, once a month, be paid by its secretary into the treasury of the state. ('17, c. 382, §4; Dec. 27, 1933, Ex. Ses., c. 27, §1.)

Sec. 2 of Act Dec. 27, 1933, cited, provides that the act shall take effect from its passage.

One practicing chiroprody prior to Jan. 1, 1917, is not entitled to license without examination where he failed to apply for registration before July 1, 1917. Op. Atty. Gen., July 20, 1933.

5774. Offenses—Penalties.

It is not unlawful for a chiroprodist who holds license in state to locate in another state but still have his name listed as having offices within state with another registered practitioner. Op. Atty. Gen., Feb. 23, 1933.

5777. Unprofessional conduct.

Whether it is unlawful for a chiroprodist to advertise his dead brother as having offices with him depends upon nature of advertising and whether public is deceived. Op. Atty. Gen., Feb. 23, 1933.

5780. Registration of certificate by clerk of district court.

Board may not compel practitioner to comply with this section, there being no penalties provided. Op. Atty. Gen., Feb. 23, 1933.

MASSAGE**5784-1 to 5784-12. [Repealed].**

Repealed by Laws 1929, c. 347, §21, post, §5784-33.

5784-13. Definitions.—As used in this act, the term "massage" shall mean the method, art or science of treating the human body for hygienic or remedial purposes exclusively, by rubbing, stroking, kneading, tapping or rolling the same with the hands, or by rubbing, stroking, kneading, tapping or rolling the body with any other agency or instrumentality for the purpose of relieving, alleviating and reducing affected parts thereof; the term "masseur" shall mean a male person and the term "masseuse" a female person who practices "massage" as herein defined; the term "Board" shall mean the State Board of Medical Examiners as the same now is or hereafter may be constituted by law; the term "license" shall mean a certificate issued by the Board authorizing the holder thereof to practice "massage" in this State. The phrase "accredited school" or "accredited institution" shall mean one approved by the board. The word "reducing" as used hereinbefore shall not be interpreted to include reducing a fracture or a dislocation. (Act Apr. 24, 1929, c. 347, §1.)

Bath parlor attendant need not be licensed under this act in order to give massages in ordinary course of business. Op. Atty. Gen., June 22, 1933.

5784-14. What is massage.—The practice of massage is hereby declared to be distinct from the practice of medicine, surgery, osteopathy, chiropractic or chiropody, and persons duly licensed in this state to practice medicine, surgery, osteopathy, chiropractic or chiropody, nurses who work solely under the direction of any such persons, athletic directors and trainers are hereby expressly excluded from the provisions of this act. It is further provided that beauty culturists, barbers and bath parlor attendants who do not give or hold themselves out to give massage treatments, as defined herein, other than is customarily given in such shops or places of business, for the purpose of beautification only, shall be exempt from the provisions of this act. (Act Apr. 24, 1929, c. 347, §2.)

5784-15. Operators must be licensed.—No person shall for or in expectation of any fee, gift, compensation or reward of any kind engage in, or hold himself out as being engaged in, the practice of massage within this state, without having a license therefor as provided in this act. (Act Apr. 24, 1929, c. 347, §3.)

5784-16. State board of medical examiners to issue license.—The Board shall issue licenses to practice massage only to persons qualified therefor under the provisions of this act after examination as herein provided, upon application in manner and form as prescribed by the Board and payment thereto of a fee of \$25.00; provided however that licenses may be renewed by the Board without examination upon application and payment of a renewal fee of \$5.00; and licenses issued pursuant to existing law and outstanding at the time of the passage of this act are hereby continued in force and effect until the same shall expire unless sooner revoked by the Board, as provided for in this act, and shall be renewed by the Board without examination upon application and payment of a renewal fee of \$5.00, except as in this act otherwise provided for; application for renewal of license as herein provided for shall be made to the Board on or before May 31st of each year, and shall be accompanied by the renewal fee of \$5.00; provided further that the Board in its discretion may without examination upon the payment of a fee of \$50.00 issue a license to any person qualified to practice massage in any other state or territory whose require-

ments for such practice are equivalent to the requirements of this state therefor. Licenses shall be in such form as the Board shall by rule prescribe, shall specify the name, residence and business location of the licensee and state that he is authorized to practice massage in the State of Minnesota; licenses shall bear the date of issuance and the date of expiration and thereof shall be signed by the President and Secretary-Treasurer of the Board and bear its official seal. All licenses shall expire on May 31st next and after the issuance thereof unless sooner revoked as herein provided. (Act Apr. 24, 1929, c. 347, §4.)

5784-17. Qualifications of applicants.—Any person of good moral character who is 21 years of age or over and has completed a course of study in an accredited high school or who has completed the equivalent of such course of study to the satisfaction of the Board, and in addition to these requirements has received a diploma or certificate of graduation from an accredited school of massage or in lieu of such diploma or certificate has received credits in the subjects of anatomy, physiology, dermatology, histology and massage from an accredited educational institution, shall be eligible for examination under the provisions of this act, otherwise he shall be ineligible therefor; and if upon such examination he shall have a general average of not less than 75 % in the subjects in which he is examined and not less than 60 % in any one of such subjects, he shall be qualified for a license hereunder, otherwise he shall be unqualified therefor. (Act Apr. 24, 1929, c. 347, §5.)

5784-18. Board may employ assistants.—The Board shall employ an expert assistant or assistants who shall serve at and during the pleasure of the Board, to assist in conducting examinations herein provided for under the Board's supervision and direction. Such expert assistant or assistants shall be citizens and residents of this state; provided further, that at least one of such expert assistants shall be skilled in the art and science of massage, who shall be duly licensed to practice massage in this state, and who shall have practiced massage therein for at least two years immediately preceding his employment. Such examinations shall be in the English language and shall be written, oral and/or practical as the Board may determine and shall embrace the subjects of anatomy, physiology, dermatology, histology and massage but shall be so limited in scope as to include only the minimum requirements for massage education as herein provided and shall not require education in medicine or surgery. Such examination shall be held on the third Wednesday in each of the months of January, April, June and October of each year, at the seat of government and at such other times and places as the Board may determine. (Act Apr. 24, 1929, c. 347, §6.)

5784-19. Re-examinations.—Any person refused a license for failure to pass an examination to the satisfaction of the Board shall be entitled to a re-examination at any time within six months after such refusal upon payment to the Board of an additional fee of \$5.00; provided that nothing in this act shall prevent any person from filing a new application at any time after one year from the date of his last application. (Act Apr. 24, 1929, c. 347, §7.)

5784-20. Licenses must be recorded.—Every person holding a license to practice massage under this act, shall, before commencing such practice in any county of this state, have such license recorded in the office of the Clerk of the District Court of such county and such Clerk shall in each case write or stamp thereon the date of such recording. The Clerk of the District Court shall keep in a book provided for such purpose by the county and open to the public inspection, a complete list of such licenses recorded by him and his predecessors in office, including the date of the issuance thereof, the name of the licensee therein specified and the date of the recording thereof. For each such recording the Clerk of the Dis-

strict Court shall receive from the person named in the license a fee of \$1.00. After such recording the license shall be conspicuously displayed by the holder thereof in the office or place where he pursues the practice of massage. (Act Apr. 24, 1929, c. 347, §8.)

5784-21. Board may suspend or revoke licenses—

Cause.—The Board may by order suspend, revoke or refuse to renew any license issued hereunder or heretofore and cause the cancellation and removal thereof from the records of the office of the Clerk of the District Court wherein the same is recorded upon the ground of: (a) fraud or deception in connection with the securing of such license; (b) habitual drunkenness or intemperance in the use of narcotics or stimulants; (c) conduct unbecoming to a person licensed to practice massage or inimical to the best interests of the public; (d) violation of any of the provisions of this act; (e) conviction of a crime involving moral turpitude; provided that before the Board shall order any such suspension, revocation or refusal to renew as herein provided for the holder thereof shall be entitled to a written statement of the charge against him and shall be accorded a hearing in person or by attorney before the Board, and be entitled to have witnesses in his behalf subpoenaed by the Board. In case of suspension or revocation of, or refusal to renew a license, the order of suspension or revocation or refusal to renew, as the case may be, shall forthwith be filed by the Board with the Clerk of the District Court of the County wherein such license is recorded and the clerk shall note such suspension, revocation or refusal to renew, on his record of such license. No license shall be issued to any person whose license has been revoked, nor to any person whose license the Board has refused to renew hereunder, until after the expiration of one year from the date of such revocation or refusal to renew; provided that any such person shall pay to the secretary-treasurer of the Board, the sum of \$25.00 upon issuance of a new license. (Act Apr. 24, 1929, c. 347, §9.)

5784-22. Powers and duties of board.—The Board shall have the power to provide for its offices and necessary furniture, fixtures and supplies and to appoint and employ, and at will to remove or discharge, such officers, agents, assistants, clerks and other employees as the Board may deem necessary for the performance of its duties and to fix their salaries and define their duties; and to prescribe rules and regulations for its own government and procedure; and to hold hearings in relation to any matter properly within its jurisdiction and prescribe rules and regulations for the conduct thereof, issue subpoenas for and compel the attendance of witnesses and the giving of testimony and the production of books, records, accounts, documents and papers; and any member of the Board may administer oath to witnesses or take their affirmation. If any person shall fail or refuse to appear or testify regarding that upon which he may be lawfully interrogated, or to produce any books, records, accounts, documents or papers material in the matter heard or to be heard by the Board, after having been lawfully required by order or subpoena of the Board so to do, any judge of the District Court in any county of the State, on application of the Board, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of a similar order or subpoena issued by such court. (Act Apr. 24, 1929, c. 347, §10.)

The "officers, agents, assistants, clerks and other employees" mentioned in this section are, with respect to compensation, within the control of the board of medical examiners within the limitation prescribed by §13 of this act, but the secretary and assistant secretary are controlled by the reorganization act (Mason's Statutes, §53-7), and compensation may be increased or diminished by the commission of administration and finance. Op. Atty. Gen., Oct. 16, 1929.

5784-23. Duties of secretary-treasurer.—The secretary-treasurer of the Board shall keep a record of all proceedings of the Board and a register of all appli-

cants for examination, setting forth the name of such applicants, together with their addresses, ages, educational qualifications and the results of their examinations; he shall perform such other duties as may be required by law or by the Board. Such records and registers of the Board shall at all times be open to public inspection, and shall be prima facie evidence in all courts and legal proceedings within the State of matters therein recorded. (Act Apr. 24, 1929, c. 347, §11.)

5784-24. Compensation.—The compensation of each member of the Board shall be \$10.00 for each day actually spent in the performance of his duties together with actual necessary expenses paid or incurred by him in connection therewith. The compensation of persons employed by the Board shall be determined by the Board and in addition thereto their expenses necessarily paid or incurred in the performance of their duties in connection therewith, subject, however, to the approval of the board. (Act Apr. 24, 1929, c. 347, §12.)

5784-25. Fees to be paid of secretary-treasurer—Bond.—All fees and moneys payable under the provisions of this act shall be paid to the secretary-treasurer of the Board and he shall forthwith deposit the same with the state treasurer to be kept by him in a separate fund, which shall be under the control and for the use of the Board in the administration of this act. And the amount of such fund is hereby annually appropriated to said Board for the purpose of defraying its expenses in carrying out the provisions of this act. The compensation and expenses of members of the Board, herein provided for, and the compensation and expenses of all persons employed by the Board hereunder, shall be paid out of said fund; in addition such fund shall be available to and may be used by the Board to defray the expenses of keeping proper records and registers, furnishing licenses herein provided for, employing an inspector or inspectors for procuring evidence of any violation of this act, and aiding in the enforcement thereof, and for such other expenses and purposes as may be deemed necessary by the Board to carry out the purposes of this act; provided, however, that the expenditures of the Board, together with the obligations created or incurred thereby, shall at no time exceed the amount of the fund in the treasury available hereunder for the use of the Board. Payments out of said fund shall be made only upon written orders issued and signed by the secretary-treasurer of the Board. Said secretary-treasurer shall give bond to the state in such sum as the Board shall determine, with sureties approved by the Board, conditioned upon the faithful performance by him of the duties of his office and his accounting for all moneys of the Board in his custody or under his control as such secretary-treasurer. (Act Apr. 24, 1929, c. 347, §13.)

Compensation of "officers, agents, assistants, clerks and other employees" mentioned in §10 are to be determined by the board of medical examiners within the limitation of this section. Op. Atty. Gen., Oct. 16, 1929.

5784-26. Not to use titles.—No person licensed to practice massage under the provisions of this act shall attach to his name or in any way use the title of doctor, physician, surgeon, specialist, M.D., M.B., D.O., D.C., or any other word, abbreviation or title indicating or designed to indicate that he is engaged in the practice of healing as defined in Chapter 149, General Laws of 1927 [§§5705-1 to 5705-23], or any practice whatsoever other than massage, unless he is duly licensed for such practice within this state according to law. No person licensed under the provisions of this act to practice massage shall in, by or through any newspaper, magazine, directory, pamphlet, poster, card, circular, or other writing or publication or by any advertisement whatsoever, state or represent either directly or indirectly that he has cured, can cure, or guarantees to cure, or that he has successfully treated any disease, injury, defect, deformity, ailment or affliction whatsoever. (Act Apr. 24, 1929, c. 347, §14.)

5784-27. Law not applicable.—Chapter 149, General Laws of 1927 [§§5705-1 to 5705-23], shall not apply to persons licensed under this act so long as such persons confine their activities within the scope of such license. (Act Apr. 24, 1929, c. 347, §15.)

5784-28. Prosecutions.—In the prosecution of any person for violation of this act, it shall not be necessary to allege or prove want of a valid license to practice massage, as required by this act, but all such matters shall be matters of defense to be established by the accused. (Act Apr. 24, 1929, c. 347, §16.)

5784-29. Violation a misdemeanor.—Any person not hereinbefore excepted from the provisions of this act who shall engage or attempt to engage in the practice of massage, as in this act defined, or hold himself out as being engaged therein, in violation of this act, without a valid existing license to practice massage issued to him pursuant to the provisions of this act, shall be guilty of a gross misdemeanor. (Act Apr. 24, 1929, c. 347, §17.)

5784-30. Violation a misdemeanor.—Any person not hereinbefore excepted from the provisions of this act who shall engage or attempt to engage in the practice of massage as in this act defined or hold himself out as being engaged therein, without having recorded his license to practice massage in the manner herein provided, or without displaying his license to practice massage as herein provided, shall be guilty of a misdemeanor. (Act Apr. 24, 1929, c. 347, §18.)

5784-31. Certain acts a gross misdemeanor.—Any person implicated in employing fraud or deception in applying for or securing a license to practice massage under this act, or in passing an examination therefor, shall be guilty of a gross misdemeanor. It shall be the duty of the Clerk of the District Court wherein any conviction is had under this section, to file a certified copy thereof with the secretary-treasurer of the Board and thereupon the secretary-treasurer of the Board shall cancel such license upon the records of his office and forthwith notify the respective clerks of the courts wherein such license is recorded, of such cancellation; and such clerks shall immediately note such cancellation on their respective records thereof. For filing a certified copy of any conviction as herein required, the clerk of the court shall charge a fee of One Dollar. (Act Apr. 24, 1929, c. 347, §19.)

5784-32. Provisions severable.—The various provisions of this act shall be severable and if any part or provisions shall be held to be invalid it shall not be held to invalidate any other part or provision hereof. (Act Apr. 24, 1929, c. 347, §20.)

5784-33. Law repealed.—Chapter 69, General Laws of 1927 [§§5784-1 to 5784-12], is hereby repealed and all moneys, property and property rights under the control of the State Board of Massage Examiners created thereby are hereby transferred, and appropriated to the control and use of the Board hereunder. (Act Apr. 24, 1929, c. 347, §21.)

OPTOMETRISTS

5785. State board of optometry—Terms.—The state board of optometry shall consist of five qualified optometrists appointed by the governor, each for a term of three years, or such part thereof as will provide for the expiration of the terms of two members January 1st, 1930; two members January 1st, 1931, and one member January 1st, 1932, and until their successors qualify. Vacancies in such boards shall be filled by like appointments for unexpired terms. ('15, c. 127, §1; '25, c. 239; Apr. 27, 1929, c. 420, §1.)

5786. Powers of Board.—Said board of optometry shall have the power to make any rules and regulations and to do any and all things, not inconsistent with law, which it may deem necessary or expedient for the effective enforcement of this act or for the full and efficient performance of its duties thereunder. ('15, c. 127, §2; '25, c. 239; Apr. 27, 1929, c. 420, §2.)

5788. Same—Compensation and expenses—etc.

The board has authority to employ a secretary or investigator who may make recommendations to the board for the citation of persons violating the act, but without power in himself to initiate a proceeding. Op. Atty. Gen., Apr. 7, 1930.

5789. Who are optometrists.—Any person shall be deemed to be practicing optometry within the meaning of this act who shall display a sign, such as an eye, a pair of eyes, a pair of glasses or spectacles, or who shall in any way advertise himself as an optometrist, or who shall employ any means for the measurement of the powers of vision or the adaptation of lenses or prisms for the aid thereof, or have in his possession testing appliances for the purpose of the measurement of the powers of vision, or diagnose any optical deficiency or deformity, visual or muscular anomaly of the human eye, or prescribe lenses, prisms or ocular exercises for the correction or the relief of same, or who holds himself out as being able to do so. It shall be unlawful for any person who is not licensed as an optometrist in this state to fit, sell or dispose of or to take, receive or solicit any order for the fitting, sale or disposition of any spectacles, eye glasses, or lenses for the correction of vision in any place within this state other than an established place of business wherein such spectacles, eye glasses or lenses are commonly sold and dealt in; and it shall be unlawful for any person, not licensed as an optometrist hereunder, to sell or dispose of, at retail, any spectacles, eye glasses or lenses for the correction of vision in any established place of business or elsewhere in this state except under the supervision, direction and authority of a duly licensed optometrist holding a certificate under this Chapter, who shall be in charge of and in personal attendance at the booth, counter or place where such articles are sold or disposed of. Nothing in this act shall be construed to apply to the sale of toy glasses, goggles consisting of plano-white or plano-colored lenses or ordinary colored glasses or to the replacement by duplication of broken lenses, nor to sales upon prescription from persons legally authorized by the laws of this state to examine eyes and prescribe glasses therefor, nor shall it apply to regularly licensed physicians and surgeons. It shall be unlawful for any person to engage in the practice of optometry without first procuring and filing for record a certificate of registration as a licensed optometrist pursuant to this subdivision. ('15, c. 127, §5; '25, c. 239; Apr. 27, 1929, c. 420, §3.)

An optometrist employed by a firm or a corporation is guilty of unprofessional conduct where the corporation employing him uses untruthful or misleading advertising. Op. Atty. Gen., July 31, 1931.

When corporation is deemed to be practicing optometry contrary to law, stated. Op. Atty. Gen., Aug. 19, 1931.

5790. Who may practice optometry.—The persons entitled to practice optometry in Minnesota who are not already registered shall be: Every person of a full age of 21 years who furnishes the board with satisfactory evidence of:

(a) His age and moral character.

(b) That he has graduated from an accredited high school or its equivalent, and that he possesses the knowledge essential to the practice of optometry.

(c) That he shall be a graduate of an optometric school or college approved by this board, requiring an attendance of not less than two years' course. Such school shall give a course of instruction covering and including the following minimum requirement, to-wit:

Ocular anatomy	125 hours
Ocular pathology	125 hours
General anatomy	150 hours
General physiology	100 hours
General mathematics	150 hours
General physics	100 hours
General optics	100 hours
Theoretical optics	300 hours
Practical optics	100 hours
Theoretical optometry	250 hours

Practical optometry	200 hours
Hygiene	50 hours
Psychology	50 hours
Optical laboratory work	100 hours
Clinical work	100 hours

In the course of study herein outlined, the hours required shall be actual work in the class room, laboratory or clinic, and at least eighty per cent of actual attendance shall be required and said course of study herein outlined shall be so arranged as to require two years of actual attendance at said school for its completion.

(d) Having passed satisfactorily an examination by the board as to his qualifications for the practice of optometry, upon the completion of which, he shall receive from said board a licensed certificate entitling him to practice. Any person desiring to be examined by said board must fill out and swear to an application furnished by the board and must file the same with the secretary of the board at least two weeks prior to the holding of an examination, which the applicant is desirous of taking. The applicant shall pay to the board a fee of twenty dollars (\$20.00) before examination and five dollars (\$5.00) upon issuance of certificate. In the event of failure on the part of a candidate to pass the first examination, he may, within fifteen months, have another trial; upon the payment of five dollars (\$5.00) additional. Any applicant may be registered and given a certificate of registration if he shall present a certified copy of certificate of registration, or license which has been issued to said applicant by any other state, where the requirements for registration shall be deemed by said board to be equivalent to those of this act; provided that such state shall accord like privileges to holders of certificates of said board. The fee for registering such applicants shall be fifteen dollars (\$15.00).

The board upon hearing of which the accused shall have ten days' notice in writing may revoke the certificates or suspend the right to practice of any person who has been convicted of any violation of this act or of any other criminal offense or who is found by the board to be grossly incompetent, afflicted with contagious disease, a habitual drunkard, or guilty of unprofessional conduct. "Unprofessional Conduct" shall be defined to mean any conduct of a character likely to deceive or defraud the public, including among other things price advertising, and free examination advertising, the loaning of his license or certificate by any licensed optometrist to any person; the employment of "cappers" or "steerers" to obtain business; "splitting" or dividing a fee with any person or persons; the obtaining of any fee or compensation by fraud or misrepresentation; employing either directly or indirectly any suspended or unlicensed optometrist, to perform any work covered by this act; the advertising by any means whatsoever, of optometric practice or treatment or advice in which untruthful, improbable, misleading or impossible statements are made. After one year, upon application, and proof, that the disqualification has ceased, the board may reinstate such person.

(e) Every registered optometrist who shall temporarily practice optometry outside or away from his regular registered place of business shall display his registered certificate and shall deliver to each customer or person there fitted or supplied with glasses a receipt or record which shall contain his signature and show his permanent registered place of business or post office address, and number of his certificate, together with the amount charged therefor, but nothing contained in this subdivision shall be construed as to permit peddling or canvassing by licensed optometrists. ('15, c. 127, §6; '25, c. 239; Apr. 27, 1929, c. 420, §4.)

Under this section as amended by Laws 1929, c. 420, §4, a formal complaint to the board is not necessary to the institution of a hearing on charges against a violator. Op. Atty. Gen., Apr. 7, 1930.

The practice of optometry is a profession which a corporation cannot lawfully practice, and it is not law-

ful for a corporation to advertise that it will furnish the services to optometrists. Op. Atty. Gen., July 31, 1931.

There is no right of appeal from findings and order of the board in proceedings to discipline a licensee, but the order is reviewable on certiorari. Op. Atty. Gen., July 31, 1931.

Applicant under 21 may take examination. Op. Atty. Gen., June 16, 1933.

5796. Laws repealed.—All acts and parts of acts so far as inconsistent herewith, are hereby repealed. ('15, c. 127, §12; '25, c. 239; Apr. 27, 1929, c. 420, §5.)

5796-2. Effective Sept. 1, 1929.—This act shall take effect September 1st, 1929. (Laws 1925, c. 239, §14, added Apr. 27, 1929, c. 420, §6.)

PHARMACISTS

5798. Per diem of members of state board of pharmacy.

Where total income of members of body is less than \$1,200 during year, their per diem compensation of \$10 is not affected by Laws 1933, c. 413, §37. Op. Atty. Gen., June 28, 1933.

5799. Meetings of state board of pharmacy.—The board shall meet at least once in every six months to examine applicants for registration and transact its other business, giving reasonable notice of all examinations, by mail, to known applicants therefor. The secretary shall record the names of all persons registered by the board, together with the grounds upon which the right of each to registration was claimed. The fee for examination shall be ten dollars. All registered pharmacists and assistants, while employed as such, shall be exempt from service as jurors. On hearing, the board may revoke any certificate of registration obtained by false representation or other fraud, or when the holder is addicted to the liquor or drug habit so as to unfit him for the practice of pharmacy, and may refuse registration to any person so addicted. (R. L. '05, §2329; G. S. '13, §5031; '13, c. 575, §2; '23, c. 403, §1; Apr. 17, 1933, c. 297, §1.)

5799-1. Effective January 1, 1934.—This Act shall be in effect from and after January 1, 1934. (Act Apr. 17, 1933, c. 297, §2.)

5800. Qualifications for pharmacists.—To be entitled to examination by the board as a pharmacist, the applicant shall be at least twenty-one years old, shall have successfully completed the work of two (2) college years, of not less than seven (7) months each, at a college or school of pharmacy which in the judgment of the board maintains proper standards, as such and shall have had at least two years of practical experience in drug stores and/or hospital pharmacy where physician's prescriptions are usually compounded; provided, however, that if the applicant shall have successfully completed a longer course than two (2) college years, of seven (7) months each, in such school or college of pharmacy, and additional year, or more, so successfully completed, shall be equivalent to one (1) year of such practical experience.

Provided, that, any person, who now is, or has been actually employed in a drug store, and/or hospital pharmacy, who shall file with the board a sworn statement of proof of that fact, or who is registered by said board as an assistant pharmacist shall be exempt from the requirements of attendance at a college or school of pharmacy, but shall be entitled, if of the required age, to examination upon the completion of four (4) years' experience, as the same is herein defined, provided further; that, one (1) year of college work, as herein defined shall be equivalent to one (1) year of experience. If upon examination the board finds him qualified, he shall be entitled to registration as such pharmacist. (R. L. '05, §2330; '07, c. 346, §1; G. S. '13, §5032; '19, c. 399, §1; Apr. 21, 1933, c. 381.)

See §5801-1.

Laws 1933, c. 301, reenacting original §5800, did not have effect of repealing amendments of 1929 and 1931, but they still remain in force and qualify 1933 act. Op. Atty. Gen., May 15, 1933.

5801. Qualification of applicants.

See §5801-1.

5801-1. Assistant pharmacists cannot register.—After January 1st, 1930, there shall be no examinations for registration or registration of any person as an assistant pharmacist. It shall be lawful for all persons duly registered as assistant pharmacists prior to said date to continue to act as such. (Act Mar. 28, 1929, c. 103, §1.)

Sec. 2 of the act repeals inconsistent acts:

5804. Annual fees.—Every person registered by the board, while continuing in business, shall annually pay to the secretary a renewal fee, to be fixed by the board, and not to exceed five dollars for a pharmacist and three dollars for an assistant. A person who has once been registered and has defaulted in the payment of fees may be reinstated within two years of such default, without examination, upon payment of arrears. Every certificate and renewal shall expire at a time therein prescribed, not later than one year from its date. (R. L. '05, §2334; G. S. '13, §5036; '13, c. 575, §5; Mar. 27, 1929, c. 94.)

5805. Definition of drugs.

172M132, 214NW766; note under §5814.
Milk of magnesia, manufactured, distributed, and sold in the manner shown by the evidence, was not a proprietary medicine. State v. F. W. Woolworth Co., 184M 51, 237NW817. See Dun. Dig. 2846(31).
The pharmacy law is constitutional as applied to sale of harmless medicine sold in original package of manufacturer. State v. F. W. Woolworth Co., 184M51, 237NW 817. See Dun. Dig. 2846.
Whether cold tablets sold by drug company contained poison injurious to plaintiff held for jury. Tiedje v. H., 184M569, 239NW611. See Dun. Dig. 2846-2847b.

5806. Wrongful labeling.

Drug company was negligent in sending barrel of raw linseed oil in response to an order for cod liver oil, and druggist was negligent in selling it to poultryman as cod liver oil. 177M390, 225NW395.

5813. Penalty for violation by druggist.

Medicines not bearing the name of the real manufacturer, but sold by a druggist under a label or representation that they have been "prepared for" him, are not proprietary. Tiedje v. H., 184M569, 239NW611. See Dun. Dig. 2846-2847b.

Section makes a druggist responsible for quality in the sale of nonproprietary drugs, and leaves the measure of his liability for proprietary medicines as before. Tiedje v. H., 184M569, 239NW611. See Dun. Dig. 2846-2847b.

5814. Offenses—Penalties.

Section is constitutional exercise of the police power. 172M132, 214NW766.

"Aspirin" is a drug or medicine and not a proprietary or patent medicine. 172M132, 214NW766.

Title of Laws 1925, c. 339, is not defective. 173M 322, 217NW342.

Registered pharmacist does not violate this section by leaving clerk in store selling other goods than drugs while he is out to his lunch and can be called by the clerk to attend within a few minutes. 173M322, 217NW 342.

Fact that a medicine properly prepared is harmless and that it is sold in the original package does not except its sale from the restrictions of this section. State v. F. W. Woolworth Co., 184M51, 237NW817. See Dun. Dig. 2846.

A store designated as a "drug store" operated by one who is not a registered pharmacist and who has none in his employ, and which sells proprietary drugs but fills no prescriptions, is not a "drug store" to which "On Sale" license may be granted. Op. Atty. Gen., Apr. 3, 1933.

EMBALMERS

5818. Examination by state board of health—Grant of license.

The granting or refusing of a license must be the formal act of the board. It cannot delegate its duties to a committee or officer. Op. Atty. Gen., Sept. 4, 1929.

BARBERS

5823 to 5846. [Repealed].

See §5846-26 herein.

5846-1. Barbers must be registered.—After July 1, 1927, no person shall practice or attempt to practice barbering without a certificate of registration as a registered barber issued pursuant to the provisions of this act, by the Board of Barber Examiners hereinafter established.

After July 1, 1927, no person shall serve or attempt to serve as an apprentice under a registered barber until he has filed notice with the board of his intention of becoming an apprentice under a registered barber.

After July 1, 1927, it shall be unlawful to operate a barber shop unless it is at all times under the direct supervision and management of a registered barber. ('27, c. 316, §1, eff. July 1, 1927; Apr. 20, 1929, c. 270, §1.)

Persons working as barbers at veteran hospital must be registered and licensed under state law. Op. Atty. Gen., Apr. 19, 1933.

5846-2. What constitutes barbering.—Any one or any combination of the following practices when done upon the head and neck for cosmetic purposes and not for the treatment of disease or physical or mental ailments and when done for payment either directly or indirectly or without payment for the public generally constitutes the practice of barbering.

To shave, trim the beard, cut or bob the hair of any person of either sex for compensation or other reward, received by the person performing such service or any other person, shall be construed as practicing the occupation of barbering within the meaning of this act:

Giving facial and scalp massages or treatments with oils, creams, lotions or other preparations either by hand or mechanical appliances;

Singeing, shampooing the hair or applying hair tonics;

Applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to scalp, face or neck. ('27, c. 316, §2, eff. July 1, 1927; Apr. 20, 1929, c. 270, §2.)

5846-3. Apprentices may be employed.—No registered apprentice may independently practice barbering, but he may as an apprentice do any or all of the acts constituting the practice of barbering, under the immediate personal supervision of a registered barber, and only one such apprentice shall be employed in any barber shop. ('27, c. 316, §3, eff. July 1, 1927; Apr. 20, 1929, c. 270, §3.)

5846-4. Exceptions.—The following persons are exempt from the provisions of this act while in the proper discharge of their professional duties:

1. Persons authorized by the law of this state to practice medicine, surgery, osteopathy, chiropractic and massage;

2. Commissioned medical or surgical officers of the United States Army, Navy, or Marine Hospital Service;

3. Registered nurses;

4. Persons practicing beauty culture.

However, the provisions of this section shall not be construed to authorize any of the persons exempted to shave or trim the beard or cut the hair of any person for cosmetic purposes. ('27, c. 316, §4, eff. July 1, 1927; Apr. 20, 1929, c. 270, §4.)

5846-5. Who may receive certificates.—A person is qualified to receive a certificate of registration to practice barbering:

1. Who is qualified under the provisions of Section 6 of this act;

2. Who is at least 18 years of age;

3. Who is of good moral character and temperate habits and free from any contagious or infectious disease;

4. Who has practiced as a registered apprentice for a period of 18 months under the immediate personal supervision of a registered barber; and

5. Who has passed a satisfactory examination conducted by the board to determine his fitness to practice barbering.

An applicant for a certificate of registration to practice as a registered barber who fails to pass a satisfactory examination conducted by the board, must continue to practice as an apprentice for an additional six months before he is again entitled to take the examination for a registered barber. ('27, c. 316, §5, eff. July 1, 1927; Apr. 20, 1929, c. 270, §5.)

5846-6. Who may receive certificates of registered apprentice.—A person is qualified to receive a certificate of registration as a registered apprentice:

1. Who has completed at least six grades of a grammar school education or who has had the equivalent thereto; and

2. Who is of good moral character and temperate habits and free from any contagious or infectious disease;

3. Who has graduated from a school of barbering approved by the board or who has studied the practice and occupation of barbering for one year under a qualified registered barber who is actively engaged in such practice; and

4. Who has passed a satisfactory examination conducted by the board to determine his fitness to practice as a registered apprentice; and

5. An applicant for a certificate of registration to practice as an apprentice who fails to pass a satisfactory examination is required to complete a further course of study of not less than five hundred hours, to be completed in three months, of not more than eight hours in any one working day, in a school of barbering approved by the board, or in the event he has taken his training under a qualified registered barber, as provided in Section 3 [§5846-3] hereof, he shall be required to take a further course of study for three months under a qualified registered barber. ('27, c. 316, §6, eff. July 1, 1927; Apr. 20, 1929, c. 270, §6.)

Convict students must study under Minnesota registered barber. Op. Atty. Gen., Aug. 31, 1933.

(3.)

A person may not be issued a student permit under barber operating only in hairdressing parlor. Op. Atty. Gen., May 11, 1933.

5846-7. Qualifications of barber school students.—No school of barbering shall be approved by the board unless it requires as a pre-requisite to admission thereto, graduation from the sixth grade of a grammar school or its equivalent as determined by an examination conducted by the board, and unless it requires as pre-requisite to graduation a course of instruction of not less than 1,000 hours to be completed within six months of not more than eight hours in any one working day; such course of instruction to include the following subjects:—Scientific fundamentals for barbering, hygiene, practical study of the hair, skin, muscles and nerves, structure of the head, face and neck, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, hair, glands, massaging and manipulating the muscles of the face and neck, hair cutting, shaving and trimming the beard.

Provided, further, that it shall be permissible for barber schools and barber colleges teaching the occupation of barbering to make a reasonable charge for materials used and services rendered by students for work done in such schools or colleges by students and there shall be one instructor to every fifteen students or minor fraction in excess thereof. Barber colleges and schools shall open at 8 A. M. and close at 6 P. M., except on days preceding holidays when the hours shall be 8 A. M. and 6:30 P. M.

All barber schools or colleges shall each respectively be conducted and operated in one building, or in connecting buildings, and no barber school or college shall have any department or branch in a building completely separated or removed from the remainder of such barber school or college.

Any person may own and operate a barber college who has had ten years' continuous experience as a barber, providing such person shall first secure from the board a permit to do so, and shall keep the same prominently displayed, and shall before commencing business file with the secretary of state a bond to the state, approved by the attorney general, in the sum of \$1,000, conditioned upon the faithful compliance of said barber school with all the provisions herein, and to pay all judgments that may be obtained

against said school or the owners thereof on account of fraud, misrepresentation or deceit practiced by them or their agents; provided, further, that all barber schools or colleges shall keep prominently displayed a substantial sign as barber school or college. Provided, further, that all barber schools upon receiving students shall immediately apply to said board for student permits upon blanks for said purpose furnished by the board.

(a) Every applicant for a student permit shall accompany his application with a fee of one dollar. ('27, c. 316, §7, eff. July 1, 1927; Apr. 20, 1929, c. 270, §7.)

An instructor in a barber college has no right to work at chair taking in money. Op. Atty. Gen., June 17, 1933.

5846-8. Application—Fee.—Each applicant for an examination shall:

1. Make application to the board on blank forms prepared and furnished by the board, such application to contain proof under the applicant's oath of the particular qualifications of the applicant;

2. Furnish to the board two 5"x3" signed photographs of the applicant, one to accompany the application and one to be returned to the applicant, to be presented to the board when the applicant appears for examination;

3. Pay to the board the required fee. ('27, c. 316, §8, eff. July 1, 1927; Apr. 20, 1929, c. 270, §8.)

5846-9 Examinations.—The board shall conduct examinations of applicants for certificates of registration to practice as registered barbers not less than four times each year, at such time and place as the board may determine, and of applicants for certificates of registration to practice as registered apprentices every 30 days.

The examination of applicants for certificates of registration as registered barbers and registered apprentices shall include both a practical demonstration and a written and oral test, and shall embrace the subjects usually taught in schools of barbering approved by the board. ('27, c. 316, §9, eff. July 1, 1927; Apr. 20, 1929, c. 270, §9.)

5846-10. Certificates of registration.—Whenever the provisions of this act have been complied with, the board shall issue a certificate of registration as a registered barber or as a registered apprentice. ('27, c. 316, §10, eff. July 1, 1927; Apr. 20, 1929, c. 270, §10.)

5846-11. Permits to practice.—A person who is at least 18 years of age and of good moral character and temperate habits, and either

1. Has a license or certificate of registration as a practicing barber from another state or country, which has substantially the same requirements for licensing or registering barbers as required by this act, or

2. Who can prove by sworn affidavits that he has practiced as a barber in another state or country for at least five years immediately prior to making application in this state, shall upon payment of the required fee be issued a permit to practice as a journeyman barber only until he is called by the board for examination to determine his fitness to receive a certificate of registration to practice barbering. Should he fail to pass the required examination, he will be allowed to practice as a journeyman barber until he is called by the board for the next term of examinations. Should he fail at the third examination, he must cease to practice barbering in this state. ('27, c. 316, §11, eff. July 1, 1927; Apr. 20, 1929, c. 270, §11.)

Barber coming from state where barbers were required to have license must present proof that he is licensed in that state, but if such state does not require license, he must submit sworn affidavits that he has practiced as barber in such state for 5 years. Op. Atty. Gen., May 23, 1933.

5846-12. Same.

1. A person who is of good moral character and temperate habits, and

2. Has a certificate of registration as an apprentice in a state or country which has substantially the same requirements for registration as an apprentice as is provided by this act shall upon payment of the required fee be issued a permit to work as an apprentice until called by the board for examinations to determine his fitness to receive a certificate of registration as an apprentice. Being able to pass the required examination he will be issued a certificate of registration as a registered apprentice. ('27, c. 316, §12, eff. July 1, 1927; Apr. 20, 1929, c. 270, §12.)

5846-13. Barber's license under present law to continue practice without examination.—Every barber in this state holding a certificate of registration as such, and every apprentice in this state holding a permit or certificate to practice as such, issued pursuant to the provisions of any statute repealed by this act, at the time of the taking effect of this act shall have the right to continue to practice as a registered barber or apprentice, as the case may be, until December 31, 1927, without the payment of any fees or any other act and shall thereafter have the right to be registered and practice as such barber or apprentice upon payment of the registration fee or fees required by this act. ('27, c. 316, §13, eff. July 1, 1927; Apr. 20, 1929, c. 270, §13.)

5846-14. Certificates to be displayed.—Every holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his work chair. ('27, c. 316, §14, eff. July 1, 1927; Apr. 20, 1929, c. 270, §14.)

5846-15. Certificates must be renewed annually.—All registered barbers and registered apprentices who continue in active practice or service shall on or before December 31, 1927, and thereafter annually, on or before December 31st of each year, renew their certificates of registration for the following year and pay the required fee. Every certificate of registration which has not been renewed during the month of December in any year shall expire on the 31st day of December in that year. All registered barbers who have failed to renew their licenses for a period of not to exceed five years may renew their certificates of registration upon payment of the required restoration fee. ('27, c. 316, §15, eff. July 1, 1927; Apr. 20, 1929, c. 270, §15.)

5846-16. Causes for revocation.—The board may either refuse to issue or renew, or may suspend or revoke any certificate of registration for any one or combination of the following causes:

- (a) Gross malpractice or gross incompetency.
- (b) Continued practice by a person having an infectious or contagious disease.
- (c) Advertising by means of knowingly false or deceptive statements.
- (d) Habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit-forming drugs.
- (e) Immoral or unprofessional conduct.
- (f) The commission of any of the offenses described in sub-division C, D, E, F, G, or H of Section 19 hereof.
- (g) The failure to practice for the period of five years prior to the date of application for issuance of renewal of license, or prior to such suspension or revocation of license.

(h) Violation of so-called Sunday closing laws, being Sections 10234 to 10236, both inclusive, of General Statutes of Minnesota, 1923. ('27, c. 316, §16, eff. July 1, 1927; Apr. 20, 1929, c. 270, §16.)

Violation of 18th Amendment constitutes moral turpitude warranting refusal of renewal. Op. Atty. Gen., May 21, 1929.

5846-17. Board must give notice in writing.—The board may neither refuse to issue or refuse to renew, nor suspend, or revoke any certificate of registration, however, for any of these causes unless the person accused has been given at least five days' notice in

writing of the charge against him and a public hearing by the board.

Upon the hearing of any such proceeding, the board may administer oaths and may procure by its subpoena, the attendance of witnesses and the production of relevant books and papers ('27, c. 316, §17, eff. July 1, 1927; Apr. 20, 1929, c. 270, §17.)

5846-18. Fees.—The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering shall be \$10.

The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice as an apprentice is \$2.00.

The fee to be paid for the renewal of a certificate of registration to practice barbering is \$2.00, and for the restoration of an expired certificate, \$5.00.

The fee to be paid for the renewal of a certificate of registration to practice as an apprentice is \$1.50, and for the restoration of an expired certificate, \$3.00.

The fees for examinations and certificates as required in this act shall be paid in advance to the secretary of the board of examiners and shall be deposited by him in the state treasury to be disbursed by the secretary on the order of the chairman in payment of expenses lawfully incurred by the board. ('27, c. 316, §18, eff. July 1, 1927; Apr. 20, 1929, c. 270, §18.)

5846-19. Violations a misdemeanor.—Each of the following constitutes a misdemeanor:

(a) The violation of any of the provisions of Section 1 of this act.

(b) Permitting any person in one's employ, supervision or control to practice as an apprentice unless that person has a certificate of registration as a registered apprentice.

(c) Obtaining or attempting to obtain a certificate of registration for money other than the required fee, or any other thing of value, or by fraudulent misrepresentation.

(d) Practicing or attempting to practice by fraudulent misrepresentations.

(e) The wilful failure to display a certificate of registration as required by Section 14, and

(f) The use of any room or place for barbering which is also used for residential or business purposes (except the sale of hair tonics, lotions, creams, cutlery, toilet articles, cigars, tobacco, candies in original package and such commodities as are used and sold in barber shops), unless a substantial partition of ceiling height separates the portion used for residential or business purposes, except that a barber shop and beauty parlor may be operated in conjunction, without the same being separated by a partition of ceiling height and except that the provisions of this subdivision shall not apply to barbers or barber shops in any village or borough or unincorporated community having less than 150 inhabitants where the governing body thereof shall under local ordinance have granted a permit for the operation of a barber shop in a particular location.

(g) The failure or refusal by any barber or other person in charge of any barber shop or any person in barber schools or colleges doing barber service work, to use separate and clean towels for each customer or patron, or to discard and launder each towel after once being used.

(h) The failure or refusal by any barber or other person in charge of any barber shop or barber school or barber college to supply clean hot and cold water, in such quantities as may be necessary to conduct such shop, or the barbering service of such school or college in a sanitary manner, or the failure or refusal of any such person to have water and sewer connections from such shop, or barber school or college with municipal water and sewer systems where the latter are available for use, or the failure or refusal of any such person to maintain a receptacle for hot water of a capacity of less than five (5) gallons. ('27,

c. 316, §19, eff. July 1, 1927; Apr. 20, 1929, c. 270, §19, and Apr. 26, 1929, c. 386, §1.)

5846-19 1/2. To have receptacles for towels.—In each barber shop there shall be provided a receptacle or receptacles for soiled towels. Each barber shall, immediately after the completion of the service to the customer, place the towel or towels used on said customer in said receptacle and no towel shall be withdrawn from said receptacle and used on any customer until the towel has been laundered. A violation of any provision of this section shall be a misdemeanor. (Act Apr. 20, 1929, c. 270, §20.)

5846-20. Perjury.—The wilful making of any false statement as to a material matter in any oath or affidavit which is required by the provisions of this act is perjury and punishable as such. ('27, c. 316, §20, eff. July 1, 1927; Apr. 20, 1929, c. 270, §21.)

5846-21. Board of Barbers Examiners created.—Terms.—A board, to be known as the Board of Barber Examiners, is established, to consist of three members appointed by the governor. Each member shall be a practical barber who has followed the occupation of a barber in this state for at least five years immediately prior to his appointment. Each member shall furthermore be a graduate from the eighth grade of a grammar school or have an equivalent education, and must have knowledge of the matters to be taught in approved schools of barbering as set forth in Section 7 hereof, and shall be qualified and competent to pass upon all matters likely to come before said board. One of said members shall be a member or recommended by a union of journeymen barbers which shall have existed at least two years, and one of said members shall be a member of or recommended by the Master Barbers Association of Minnesota.

The members of the first board appointed shall serve for three years, two years and one year, respectively, as appointed, and members appointed thereafter shall serve for three years. The governor may remove a member for cause.

Members appointed to fill vacancies caused by death, resignation or removal shall serve during the unexpired term of their predecessors. Provided, that the present members of the board of barber examiners shall remain in office until the completion of their respective terms. ('27, c. 316, §21; Apr. 20, 1929, c. 270, §22.)

5846-22. Officers—Compensation.—The board shall elect a chairman and secretary. It shall adopt and use a common seal for the authentication of its orders and records.

The secretary shall keep a record of all proceedings of the board and shall turn over to the treasurer of the state, all moneys collected, at least once a month.

Each member of said board shall give a bond in the sum of \$5,000 with sureties to be approved by the secretary of state, conditioned for the faithful performance of his duties, and shall take the oath provided by law for public officers.

A majority of the board, in meeting duly assembled, may perform and exercise all the duties and powers devolving upon the board.

The secretary of the board shall receive as compensation \$3,000 per annum, and the other members of the board shall receive a compensation of \$10 per day for each [day] of actual service in the discharge of their duties as such, and in addition thereto, all members of the board, including the secretary, shall be reimbursed and receive their necessary traveling expenses incurred in the discharge of their duties, both salaries and expenses to be paid only and from out of the fund created by fees collected in the administration of this act. Each member of the board shall file monthly with the secretary of said board, a complete report showing his activities during the preceding month, and stating in detail the places, shops, schools or colleges visited or inspected by such board

member. The board shall report annually to the governor, a full statement of the receipts and disbursements of said board, and also a full statement of its doings and proceedings during the year, with which recommendations as it may deem expedient.

The board shall have authority to employ such inspectors, clerks, deputies and other assistants as it may deem necessary to carry out the provisions of this act.

Any funds in the state treasury to the credit of the present board of barber examiners shall be transferred to and made available for use by the board established under the provisions of this act. ('27, c. 316, §22, eff. July 1, 1927; Apr. 20, 1929, c. 270, §23.)

If a member of the board of barber examiners spends any part of the day in the discharge of his duties as such member, he is entitled to charge the full \$10. Op. Atty. Gen., June 29, 1931.

A member of the board should not be permitted to charge a per diem while attending a national convention of barbers. Op. Atty. Gen., June 29, 1931.

Under Laws 1933, c. 413, salary of secretary of barber board must be reduced in a proximate percentage as reductions made by heads of departments, while compensation of other members of board are governed by rules set forth in opinion of June 28. Op. Atty. Gen., June 29, 1933.

5846-23. Board to make rules and regulations.—The board shall have authority to make reasonable rules and regulations for the administration of the provisions of this act and prescribe sanitary requirements for barber shops and barber schools, subject to the approval of the state board of health. Any member of the board or its agents or assistants shall have authority to enter upon and to inspect any barber shop or barber school at any time during business hours. A copy of the rules and regulations adopted by the board shall be furnished by the board to the owner or manager of each barber shop and barber school, and such copy shall be posted in a conspicuous place in such barber shop or barber school.

The board shall keep a record of its proceedings relating to the issuance, refusal, renewal, suspension and revocation of certificates of registration. This record shall also contain the name, place of business and residence of each registered barber and registered apprentice and the date and number of his certificate of registration. This record shall be open to public inspection at all reasonable times. ('27, c. 316, §23, eff. July 1, 1927; Apr. 20, 1929, c. 270, §24.)

Barber board has power to revoke license of shop failing to comply with reasonable order given by inspector. Op. Atty. Gen., Apr. 19, 1933.

5846-24. Not to serve certain persons.—No person practicing the occupation of a barber in any barber shop, barber school, or college in this state shall knowingly serve a person afflicted in a dangerous or infectious state of the disease with erysipelas, eczema, impetigo, syphilis, tuberculosis, or any other contagious or infectious disease. Any person so afflicted is hereby prohibited from being served in any barber shop, barber school or college in this state. Any violation of this section will be considered a misdemeanor as provided for in this act. ('27, c. 316, §24, eff. July 1, 1927; Apr. 20, 1929, c. 270, §25.)

5846-25. Provisions severable.—If any portion of this act is declared unconstitutional by a court of competent jurisdiction, it shall not affect the validity of the remainder of the act which can be given effect without the invalid portion. ('27, c. 316, §25, eff. July 1, 1927; Apr. 20, 1929, c. 270, §26.)

5846-26. Laws repealed.—Session Laws 1921, Chapter 424, Session Laws 1925, Chapter 252, and Sections 5823 to 5846, both inclusive, of General Statutes of Minnesota, 1923, and all other acts or parts of acts inconsistent with the provisions of this act are hereby repealed. ('27, c. 316, §26, eff. July 1, 1927; Apr. 20, 1929, c. 270, §27.)

HAIR DRESSERS AND BEAUTY CULTURISTS

5846-27. Unlawful to engage in occupation or conduct shops except as authorized.

Act does not provide that compensation to beauty culturists must come directly from one who receives treatment. *Luzier Special Formula Laboratories v. M.*, 248NW664.

Occupation of beauty culturist is a lawful occupation, but of a nature similar to that of barbering and subject to regulation. *Id.*

Act is constitutional. *Id.*

City has power to regulate beauty culturists and hairdressing. *Op. Atty. Gen.*, Aug. 7, 1933.

5846-28. Definitions—places where taught or practiced.—For the purposes of this act, the following definitions shall be adopted and understood to be included within the meaning of the Act.

(a) Any person who engages in general public practice for compensation or other reward in any one or any combination of the following practices, to-wit: arranging, dressing, curling, waving, cleansing, singeing, bleaching, coloring, or similar work upon the hair of any living person by any means, or slight hair trimming of women, as a part of women's hairdressing; the use of cosmetic preparations, antiseptics, tonics, lotions, or creams, aided with the hands or mechanical or electrical apparatus, or appliances used in massaging, cleansing, stimulating, manipulating, exercising, beautifying, the scalp, face, neck, arms, bust or upper part of the body for the purposes of beautification, shall be defined as and construed to be practicing hairdressing and beauty culture, provided, however, that no provision of this act shall in any manner be construed to apply to manufacturers of cosmetics, or their representatives or employees.

(b) An operator is any person who has secured a license to engage in and engages in and follows the practices as named within this Act.

(c) A manager-operator is any person of legal age who owns, operates, conducts or manages a hairdressing and beauty culture shop or school; or who instructs in practical hairdressing and beauty culture work; provided, however, that it shall be lawful for any person to own, operate, conduct or manage a hairdressing and beauty culture shop or school without being licensed as a manager-operator if such person does not instruct in or practice any of the practices as defined in this Act but does employ one or more manager-operators in said shop or school to manage same or instruct therein.

(d) Hairdressing and beauty culture shall be practiced only in a room or rooms not used for sleeping or residential purposes, completely partitioned off from living quarters and must be equipped with hot and cold running water and with sewer connections. Where water and sewer connections are not available there must be maintained a proper receptacle for hot water of a capacity of not less than five gallons, and such cesspool or other method for the disposal of sewage and waste matter as may be approved by the local health authorities or local municipal ordinances.

(e) All beauty shops shall be registered with the Board by the owners thereof, annually on or before the 31st day of December, upon blanks provided for such purposes by the Board showing the names of the owners and the location of their respective shops, and no such shops shall be permitted to operate without such registration.

(f) Hairdressing and beauty culture shall be taught in a room or rooms not used for sleeping or residential purposes and such rooms must be equipped with sufficient hot and cold running water and with sewer connections to insure sanitation for all students in attendance. Text books and charts and proper equipment necessary to conduct a school efficiently must be maintained by the school.

(g) A school of hairdressing and beauty culture is a place where any person, firm or corporation operates and maintains a class to teach beauty culture as defined under this Act; or the individual dissemination of knowledge regarding hairdressing or beauty culture whether such person, firm, or corporation accepts compensation or not, shall be defined as a school

of hairdressing and beauty culture. ('27, c. 245, §2, eff. July 1, 1927; Apr. 15, 1933, c. 264, §1.)

5846-32. Same—Secretary-treasurer—Salary—Expenses—Bond.

Law makes no provision for assistant to secretary-treasurer, and there is no authority in board to bond an assistant. *Op. Atty. Gen.*, Feb. 24, 1933.

Secretary-treasurer may not charge car fare and cost of lunches to board. *Op. Atty. Gen.*, Feb. 24, 1933.

Opinion of June 28 with respect to reduction of salaries under Laws 1933, c. 413, §37, applies to secretary of board. *Op. Atty. Gen.*, June 29, 1933.

5846-34. Qualifications of applicants for examinations and licenses—license fees.—The Board shall determine the sufficiency of the preliminary qualifications of the applicants for admission to examinations for license or qualifications for license. The following preliminary qualifications shall be sufficient:

(a) An operator may be licensed as such under this Act upon the payment of a fee of Five Dollars (\$5.00), provided he is of good moral character, and free from contagious or infectious diseases, is at least sixteen (16) years of age, and have an eighth-grade school education or equivalent thereof, and shall have satisfactorily passed both practical and theoretical examinations as given by the Board. The examination of such applicants shall be conducted under rules prescribed by such Board, and such examination shall include both practical demonstrations and written or oral tests, and shall not be confined to any specific system or method of hairdressing and beauty culture, and such examination shall be consistent with the practical and theoretical requirements as provided by this Act. If a student shall fail to pass such examination, he or she shall take further training before being admitted to another examination, such further training time shall be specified by the Board but shall not exceed two hundred (200) hours.

(b) A manager-operator may be licensed as such under this Act upon the payment of a fee of Ten Dollars (\$10.00) provided that he or she has practiced as an operator under the supervision of a manager-operator in this state for at least one year, and upon complying with all other requirements applicable to a manager-operator as provided for in this Act.

(c) Renewal license fees shall be as follows:

For Operator—\$2.00.

For Manager-operator—\$3.00.

('27, c. 245, §8, eff. July 1, 1927; Apr. 15, 1933, c. 264, §2.)

Laws 1933, c. 264, §2(b), imposes additional limitation upon manager-operator applicable to holders of manager-operator licenses upon expiration of such licenses. *Op. Atty. Gen.*, May 24, 1933.

5846-35. Temporary licenses to operators.

One who has practiced as operator in all branches of beauty work in another state must obtain an operator's license, and may not be granted a temporary license. *Op. Atty. Gen.*, Feb. 3, 1933.

5846-36. Schools—approval by board—instruction and course of instruction.—It shall be competent for any person, firm, or corporation, conducting a hairdressing and beauty culture school, to apply to the Board annually on or before the 31st day of December, and receive from said Board a certificate of approval for such school, and to have such school rated by the Board as an approved school in hairdressing and beauty culture and placed upon its list of such approved schools, upon complying with the following provisions; each applicant, whether individual, firm or corporation, shall prior to the opening of such school, present to such Board an application containing the following information: (1) Full name of individual, firm or corporation; including all the members, owners and directors of such firm or corporation.

(2) The past occupation of such individual or individuals.

(3) A complete financial statement showing the financial worth and responsibility of the individual or individuals constituting the firm or corporation.

(4) A brief plan of operation.

Upon receipt of such application the Board shall within a reasonable time determine the qualifications of the person or persons, firm or corporation seeking such application, and the issuance of such permit, license or certificate of registration shall be purely at the discretion of said Board. Provided that the Board may refuse to grant or renew any such certificate to any individual, firm or corporation guilty of fraud in making application therefor or at any time found guilty of a felony, immorality, or grossly unprofessional or dishonest conduct. Every beauty culture school in this state now holding a certificate of registration as such shall continue to practice as a registered beauty culture school without submitting a financial statement until such time as the Board shall request the same.

(a) The school shall maintain upon its staff one competent and qualified instructor for each thirty students or fraction thereof, and such school shall give and require a course of training and instruction of not less than one thousand (1,000) hours of class room work, divided into classified hours conforming with the curriculum issued by the Board, said hours not to exceed eight (8) hours per day, to include both practical instruction and study and recitation in sanitation, sterilization, and the use of antiseptic consistent with the practical and theoretical requirements as applicable to and as provided in this Act; and shall comply with all rules and regulations relating to schools as in this Act contained. Professional departments shall be separated from the student section of the school.

(b) No school, duly approved under this Act, shall refuse to teach any student, otherwise qualified, on account of race, creed or color. ('27, c. 245, §10, eff. July 1, 1927; Apr. 15, 1933, c. 264, §3.)

5846-39. Practitioners from other states.

Board may dispense with examination for license upon proof that applicant has practiced in another state for a period of one year. Op. Atty. Gen., Feb. 3, 1933.

5846-41. Display of license—renewal license.—Every holder of a license granted by the said Board, as provided in this Act, shall display it in a conspicuous place in his place of business. All licenses shall expire December 31st of the year in which issued, unless renewed as herein provided. The holder of a license issued by the said Board shall annually, on or before the 31st day of December, renew his license and pay the renewal fee. If such license is not renewed on or before December 31st, of the year in which it is issued, such licensee shall pay a penalty of Five Dollars (\$5.00), in addition to the renewal fee of an operator's license and Ten Dollars (\$10.00), in addition to the renewal fee of a manager-operator's license. Such renewal license, however, shall be issued without examination within six (6) months from the time of expiration thereof. ('27, c. 245, §14, eff. July 1, 1927; Apr. 15, 1933, c. 264, §4.)

Board cannot extend time for renewal of license. Op. Atty. Gen., Jan. 14, 1929.

Amendment by Laws 1933, c. 264, is not strictly retroactive, and operators who secured their licenses before April 16, 1933, do not have to pay penalty. Op. Atty. Gen., May 17, 1933.

5846-41½. Provisions separable.—If any portion of this Act is declared unconstitutional by a court of competent jurisdiction, it shall not effect the validity of the remainder of the Act which can be given effect without the invalid portion. (Act Apr. 15, 1933, c. 264, §5.)

VETERINARIANS

5847. Veterinary examining board.

In action for negligent failure of veterinarian to diagnose hog cholera, evidence held to sustain finding of negligence. *Bekkemo v. E.*, 186M108, 242NW617.

In action against veterinarian negligently failing to correctly diagnose hog cholera, evidence held sufficiently certain and definite to prove damages. *Bekkemo v. E.*, 186M108, 242NW617. See Dun. Dig. 7488c.

There is but one school of veterinary medicine. *Bekkemo v. E.*, 186M108, 242NW617. See Dun. Dig. 7487.

HORSESHOERS

5852 to 5854. [Repealed].

Repealed by Laws 1929, c. 60.

STALLIONS

5855. Horses used for breeding purposes to be registered.

See §8553 for liens for services of stallions.

ELECTRICIANS

5872. State board of electricity.

Salary of secretary is subject to reduction under Laws 1933, c. 413, §37, under rules set forth in opinion of June 28. Op. Atty. Gen., June 29, 1933.

PRIVATE DETECTIVES

5880. License.

One carrying on business of watchman's service, through employees, about residences of certain persons in a given district is not operating a private detective agency for which a license would be required, unless he undertook to detect person having committed crime. Op. Atty. Gen., Aug. 21, 1933.

CHAIN STORES

5887-1. Definition.—(a) The term "person," when used in this Act, shall include individuals, partnerships, trusts, associations, joint stock companies, corporations, and firms however organized or whatever be the plan of operation.

(b) There is hereby imposed upon every person engaged within the State of Minnesota in conducting a business by the system of chain stores from any of which are sold or otherwise disposed of at retail any goods, wares or merchandise, excepting any person selling at retail one or more of the following—fuel, lumber, building material, gasoline and oils, and grain, if the gross sales of any such person from such produce or products shall, during any year for which the tax is imposed, equal or exceed 95 per centum of the total gross sales from all sources of any such person, and excepting cooperative associations organized under the laws of this State in good faith and not for the purpose or with the intent of evading the tax hereby imposed, an annual tax for each calendar year during any part of which such taxpayers shall be so engaged, which tax shall be computed as hereinafter provided for. (Act Apr. 12, 1933, c. 213, §1.)

5887-2. Rate of Tax.—The tax imposed by Section 1 shall be equal to the sum of the amount due under the provisions of subdivision (a) and the amount due under the provisions of subdivision (b) of this section 2, as follows:

(a) A specific amount to be determined as follows:

(1) \$5.00 for each store in excess of one and not in excess of 10 if said business is conducted at not in excess of 10 stores or mercantile establishments within this state under a single or common ownership, supervision or management.

(2) \$15.00 for each store in excess of 10 and not in excess of 20 if said business is conducted at in excess of 10 but not in excess of 20 stores or mercantile establishments within this state under a single or common ownership, supervision or management.

(3) \$35.00 for each store in excess of 20 and not in excess of 30 if said business is conducted at in excess of 20 but not in excess of 30 stores or mercantile establishments within this state under a single or common ownership, supervision or management.

(4) \$65.00 for each store in excess of 30 and not in excess of 40 if said business is conducted at in excess of 30 but not in excess of 40 stores or mercantile establishments within this state under a single or common ownership, supervision or management.

(5) \$105.00 for each store in excess of 40 and not in excess of 50 if said business is conducted at in excess of 40 but not in excess of 50 stores, or mercantile establishments within this state under a

single or common ownership, supervision or management.

(6) \$155.00 for each store in excess of 50 if said business is conducted at in excess of 50 stores or mercantile establishments within this state under a single or common ownership, supervision or management.

(b) An amount based on the combined gross sales in excess of the exemption set forth in Section 4, of said business at all stores or mercantile establishments within this state under a single or common ownership, supervision or management, but which shall be computed by applying the following rates to the specified portions of such entire or combined gross sales in excess of said exemption.

(1) 1/20th of one per cent on that portion of the gross sales not in excess of \$100,000.00.

(2) 2/20ths of one per cent on that portion of the gross sales in excess of \$100,000.00 but not in excess of \$200,000.00.

(3) 3/20ths of one per cent on that portion of the gross sales in excess of \$200,000.00 and not in excess of \$300,000.00.

(4) 4/20ths of one per cent on that portion of the gross sales in excess of \$300,000.00 and not in excess of \$400,000.00.

(5) 5/20ths of one per cent on that portion of the gross sales in excess of \$400,000.00 and not in excess of \$500,000.00.

(6) 6/20ths of one per cent on that portion of the gross sales in excess of \$500,000.00 and not in excess of \$600,000.00.

(7) 8/20ths of one per cent on that portion of the gross sales in excess of \$600,000.00 and not in excess of \$700,000.00.

(8) 10/20ths of one per cent on that portion of the gross sales in excess of \$700,000.00 and not in excess of \$800,000.00.

(9) 12/20ths of one per cent on that portion of the gross sales in excess of \$800,000.00 and not in excess of \$900,000.00.

(10) 15/20ths of one per cent on that portion of the gross sales in excess of \$900,000.00 and not in excess of \$1,000,000.00.

(11) One per cent on that portion of the gross sales in excess of \$1,000,000.00. (Act Apr. 12, 1933, c. 213, §2.)

5887-3. Definitions.—The terms "store" and "mercantile establishment" shall mean any fixed place at which said business is conducted even if said place is at the same time being used for other purposes. Conducting a business by the system of Chain Stores shall mean conducting such business from two or more stores under a single or common ownership, supervision or management. Two or more stores or mercantile establishments shall, for the purposes of this Act, be treated as being under a single or common ownership, supervision or management if directly or indirectly owned or controlled by a single person or any group of persons having a common interest in such stores or mercantile establishments, or if any part of the gross revenues, net revenues, or profits from any such stores or mercantile establishments shall directly or indirectly be required to be immediately or ultimately made available for the beneficial uses, or shall directly or indirectly inure to the immediate or ultimate benefit, of any single person or any group of persons having a common interest therein. (Act Apr. 12, 1933, c. 213, §3.)

5887-4. What are gross sales.—The term "gross sales" shall mean the money value of the consideration received or receivable by the vendor or transferor from the vendee or transferee from every retail sale or transfer made in connection with the business upon which the tax levied by Section 1 is imposed, excepting gross sales of goods, the sale of which at retail is excepted from the tax as provided in Section

1 (b), even when sold at stores, sales from which are subject to the tax hereby imposed. The amount thereof shall be determined in accordance with the method employed by the taxpayer in keeping his accounts. A taxpayer keeping his account on an accrual basis shall be permitted in each year to deduct a reasonable amount to care for bad debts attributable to the business for such year, subject to correction by including recoveries in gross sales for the year of recovery. A taxpayer keeping his accounts on the cash receipts and disbursements basis shall include the gross receipts from sales in the gross sales of the year of their receipt regardless of the year in which the sale was made. A taxpayer may, with the consent of the State Tax Commission, keep his accounts on the installment basis if such method properly reflects the gross sales of his business for any year, and said Commission may prescribe rules to insure that such taxpayers shall properly allocate gross sales as between successive tax years. Gross sales shall not include the consideration received by a vendor from a purchaser if the sale is made from a store or mercantile establishments in this state to a purchaser residing without this state unless the purchaser is present within this state at the time of such sale and purchase. The tax imposed by Section 1, so far as measured by gross sales, shall be measured by the gross sales of the year for which the tax is imposed; provided, however, there shall be exempted from the total aggregate gross sales of any such business in each tax year the gross sales from that one of all the stores or mercantile establishments within this State under a single or common ownership, supervision or management, which the person on whom the tax is imposed shall select if the State Tax Commission is notified thereof prior to the first day of February of the year for which the tax is imposed, provided, further, that as to the tax for 1933, such notification may be made on or before July 1st, 1933. (Act Apr. 12, 1933, c. 213, §4.)

5887-5. Computation of tax.—The tax imposed hereby so far as measured by Section 2-(a) shall be computed on the basis of the number of stores under a single or common ownership, supervision or management on July 1st of each tax year. (Act Apr. 12, 1933, c. 213, §5.)

5887-6. Tax period to begin July 1, 1933.—The first year for which this tax is hereby imposed shall be the period commencing with July 1st, 1933, and ending with December 31st, 1933. The tax imposed, so far as measured in accordance with Section 2-(a) shall for that period be due and payable on or before July 1st, 1933, and that portion of such tax so far as measured by Section 2-(b) shall be due and payable on or before January 20th, 1934. (Act Apr. 12, 1933, c. 213, §6.)

5887-7. Date payable.—The tax imposed by Section 1 shall be payable as follows:

(a) That portion thereof measured by Section 2-(a) shall be paid on or before January 20th of each year.

(b) That portion thereof measured in accordance with Section 2-(b) shall be paid on or before January 20th of the year succeeding that for which imposed or within 30 days after any person liable for such tax shall cease entirely to do business within this state of the kind on which the tax is imposed. (Act Apr. 12, 1933, c. 213, §7.)

5887-8. Return to Tax Commission.—Every person on whom a tax is imposed by Section 1 shall make a return of his gross sales for the year for which the tax is imposed to the State Tax Commission on forms to be prepared by the Commission, and to be furnished him by said Commission. Said return shall be filed with the State Tax Commission on or before January 20th of the year following the year for which the tax is imposed or within 30 days after any such person shall cease entirely to do business within this state

of the kind on which the tax is imposed. The Minnesota Tax Commission shall enter on its records, the amount of taxes found and determined by it to be due from any person, as hereinbefore provided, and on or before January 30th following, shall certify such amount to the State Auditor, who thereupon shall make his draft upon such person for the amount of taxes thus certified and place the same in the hands of the State Treasurer for collection. When such drafts have been placed by the State Auditor in the hands of the State Treasurer for collection, the State Treasurer shall mail, within 10 days, to the person from whom the tax is due, a written notice of the amount thereof and demand for its payment. The taxes shall be collected by and paid to the State Treasurer. (Act Apr. 12, 1933, c. 213, §8.)

5887-9. Tax Commission may make assessment.—If any person required by this Act to file any return shall fail to do so within the time prescribed by this Act, or shall make, wilfully or otherwise, an incorrect, false or fraudulent return, he shall on the written demand of the Tax Commission file such return, or corrected return, within 30 days after the mailing to him of such written demand. If any person shall fail within said time to file such return, or corrected return, the Tax Commission shall make for him a return, or corrected return, from its own knowledge and from such information as it can obtain through testimony or otherwise, and assess a tax on the basis thereof, the amount of which tax (less payment theretofore made on account of such tax) shall be certified to the State Auditor. (Act Apr. 12, 1933, c. 213, §9.)

5887-10. Unpaid tax to be collected by sheriff.—If any such draft remains unpaid for more than 60 days after demand has been made by the Treasurer for its payment, recovery may be had thereon in an action in the name of the State in the same manner as if it were a debt due the State. Such tax may also be collected by having the State Auditor issue his warrant to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the taxpayer within the county, and to return such warrant to the State Auditor and pay to him the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant. The sheriff shall proceed thereunder to levy upon and seize any property of the taxpayer within his county, and shall sell so much thereof as is required to satisfy such taxes and his costs, but such sales shall as to their manner be governed by the laws applicable to sales of like property on execution issued against property upon a judgment of a court of record. The sheriff shall make a return to the State Auditor and the proceeds of such sale less the sheriff's costs shall be turned over by the State Auditor to the State Treasurer who shall retain such part thereof as is required to satisfy the tax and costs and pay over any balance to the taxpayer. No suit shall lie to enjoin the collection of the taxes imposed by this Act. (Act Apr. 12, 1933, c. 213, §10.)

5887-11. Recovery of illegal taxes paid—action or claim before Tax Commission—certificate for refundment—interest—filing certificate or judgment with state auditor—payment—appropriation.—A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected (other than by the method provided for in the first sentence of Section 10) any tax not legally due or any amount of tax in excess of that legally due may (1) file with the Tax Commission a claim for the refund of such tax or such excess and/or (2) recover the same by an action at law against the State in any court of record, but no such claim may be filed and no such action may be brought after the expiration of two years from the date of payment of the tax involved. If a taxpayer shall file under, no action may be brought against the State with the Tax Commission a claim for refund hereto recover the tax included in such claim until said

Commission has finally disposed thereof or has failed within six months after the filing of such claim to render final action thereon.

If the Tax Commission finds that the tax for the refundment of which claim is filed was not legally due or payable, it shall issue its certificate to the taxpayer for the refundment thereof, otherwise it shall disallow such claim.

Any claim for refund allowed by the Tax Commission, and any judgment recovered against the State in an action to recover any such tax, shall include interest upon the tax refunded or recovered from the date of payment until the date of refundment or judgment at the rate of six (6) per cent per annum, and any such judgment shall bear a like rate of interest from date of entry until date of payment thereof.

Any certificate for refundment issued by the Tax Commission hereunder or a certified copy of any judgment against the State recovered hereunder may be filed with the State Auditor, who shall thereupon issue his warrant on the State Treasurer for the amount thereof in favor of the payee of such certificate or judgment creditor, as the case may be, and it shall be the duty of the State Treasurer to pay all such warrants out of any funds in the state treasury not otherwise appropriated.

There is hereby appropriated out of any funds at any time in the state treasury not otherwise appropriated (but not exceeding at any time the total amount of taxes to that time paid or collected under this act plus interest at the rate of six (6) per cent per annum on the amount of each payment of taxes from the date paid until refunded by order of the Tax Commission, or repaid pursuant to judgment recovered hereunder or until claim for refundment thereof and action for the recovery thereof are barred hereunder) such sum or sums as may be necessary from time to time to pay such refunds and judgments. (Act Apr. 12, 1933, c. 213, §11; Dec. 23, 1933, Ex. Ses., c. 16, §1.)

5887-11a. Same—amendment of §49.—Minnesota Statutes of 1927, Section 49 insofar as inconsistent herewith is hereby amended. (Act Dec. 23, 1933, Ex. Ses., c. 16, §2.)

5887-12. Interest on unpaid taxes.—Taxes shall bear interest at the rate of one per cent per month during the period during which they remain unpaid. Said interest shall be collected in the same manner as hereinbefore provided for the collection of the taxes imposed by this Act. (Act Apr. 12, 1933, c. 213, §12.)

5887-13. Violations a misdemeanor.—Any person liable to a tax imposed by this Act who shall fail to pay the same when payable, or who shall violate any other provision of this Act, imposing duties on him, shall be guilty of a misdemeanor. (Act Apr. 12, 1933, c. 213, §13.)

5887-14. Tax Commission to administer act.—The Minnesota Tax Commission shall administer and enforce the assessment of the tax imposed by this Act. It may make and publish such rules and regulations, not inconsistent with this Act as it may deem necessary in enforcing its provisions. It shall cause to be prepared blank forms for the returns required by this Act, and shall distribute the same throughout the State and furnish them on application, but failure to receive or secure them shall not relieve any person from the obligation of making any return required of him by this Act. (Act Apr. 12, 1933, c. 213, §14.)

5887-15. Tax Commission may examine books.—For the purpose of determining the correctness of any return, or of determining whether or not any person should have made a return or paid tax hereunder, the Tax Commission shall have the power to examine or cause to be examined any books, papers, records, or memoranda relevant to making such determinations, whether such books, papers, records or memoranda

are the property of or in the possession of the taxpayer or any other person. It shall further have the power to require the attendance of any taxpayer or other person having knowledge or information relevant to such determinations aforementioned, to compel the production of books, papers, records or memoranda by persons so required to attend, to take testimony on matters material to such determinations, and to administer oaths or affirmations in any such connection. The Tax Commission is empowered at any time and from time to time to require any owner or manager of any store in the State of Minnesota to file with the Tax Commission, a statement under oath, showing the ownership, management and control of such store for the purpose of determining whether or not such store is subject to the tax hereby imposed. Such statement shall be in such form as the Tax Commission shall prescribe. (Act Apr. 12, 1933, c. 213, §15.)

5887-16. Appropriation for expense.—There is hereby appropriated out of the moneys in the State Treasury, not otherwise appropriated, the sum of \$10,000 for each of the fiscal years ending June 30, 1934, and June 30, 1935, respectively, which appropriation is hereby made to the State Tax Commission to be used by it for the purposes of collecting the tax provided for by this Act. (Act Apr. 12, 1933, c. 213, §16.)

5887-17. Disposition of tax.—The revenue derived from taxes, interest, and fines provided for in this Act when collected is hereby appropriated for the purpose of being credited to the appropriation now annually made for aid to state high, graded, semi-graded, consolidated, industrial, and rural schools, as now provided by law, to be distributed by the Department of Education in accordance with existing laws. (Act Apr. 12, 1933, c. 213, §17.)

5887-18. Provisions separable.—If any part or provision of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate any other part or provision in the remainder of the Act; and, if any part or provision of this Act shall for any reason be adjudged by any court of competent jurisdiction constitutionally inapplicable to any case or situation within the terms of such part or provision, such judgment shall not impair or invalidate such part or provision as applied to any other case or situation within their terms; and, if any exception from the tax hereby imposed shall for any reason be adjudged by any court of competent jurisdiction invalid, the tax shall be imposed upon the taxable subject as to whom or which such exception has thus been held invalid. (Act Apr. 12, 1933, c. 213, §18.)

PLUMBERS

5887-19. State board of health to supervise plumbing, etc.—(a) The State Board of Health shall supervise plumbing, drainage, sewerage and plumbing ventilation in connection with all building in this state and may prescribe minimum standards which shall be uniform.

(b) The Board shall employ plumbing inspectors and other assistants to carry out this Act. (Act Apr. 21, 1933, c. 349, §1.)

5887-20. Cities and villages may adopt regulations.—Any city or village now or hereafter having a population of 5,000 or more, according to the last Federal or State census, having a system of water works or sewerage, may by ordinance adopt the minimum rules and regulations of the State Board of Health and prescribe rules and regulations for the materials, construction, alteration and inspection of pipes, tanks and fixtures by which supply or waste or sewage is used or carried, and provide that they shall not be placed in any building except in accordance with plans approved in said ordinance, and that no plumbing shall be done, except by owner on his own

premises. But no city or village shall prohibit plumbers licensed by the State Board of Health from engaging in or working at the business, except cities which at the time when this act shall take effect by ordinance require the licensing of plumbers. (Act Apr. 21, 1933, c. 349, §2.)

5887-21. Violations to be reported to state board of health.—Such local authority as may be designated by any such ordinance for the issuance of such plumbing permits and approval of such plans shall report to the State Board of Health persistent or wilful violation of the same and any incompetence of a licensed plumber observed by said local authority. (Act Apr. 21, 1933, c. 349, §3.)

5887-22. Plumbers must be licensed.—(a) In any city or village now or hereafter having 5,000 or more population, according to the last Federal or State census, and having a system of water works or sewerage, no person firm or corporation shall engage in or work at the business of a master plumber or journeyman plumber unless licensed to do so by the State Board of Health. A master plumber may also work as a journeyman plumber.

(b) In any such city or village no person, firm or corporation shall engage in the business of installing plumbing nor install plumbing in connection with the dealing in and selling of plumbing material and supplies unless at all times a licensed master plumber, who shall be responsible for proper installation is in charge of the plumbing work of such persons, firm or corporation.

(c) The State Board of Health shall prescribe rules and regulations not inconsistent herewith for the examination and licensing of plumbers. (Act Apr. 21, 1933, c. 349, §4.)

Assistant superintendent of water department of International Falls need not have license. Op. Att. Gen., Sept. 14, 1933.

5887-23. Definitions.—(a) A journeyman plumber is any other than a master plumber, who, as his principal occupation, is engaged in the practical installation of plumbing.

(b) A master plumber is any person skilled in the planning, superintending and the practical installation of plumbing and familiar with the laws, rules and regulations governing the same.

(c) Plumber's apprentice is any person other than a journeyman or master plumber, who, as his principal occupation is engaged in learning and assisting in the installation and drainage. (Act Apr. 21, 1933, c. 349, §5.)

5887-24. Examiners.—The State Board of Health shall appoint three examiners of whom one shall be a practical master plumber, one a practical journeyman plumber and one a representative of the Board, to be known as the plumbing examiners. Such master plumber and such journeyman plumber shall each receive his expenses and such sum per diem for each day actually engaged in duties connected with the carrying out of the provisions of this Act as the Board shall fix by its order. (Act Apr. 21, 1933, c. 349, §6.)

5887-25. Applications.—(a) Applications for plumber's license shall be made to the State Board of Health, with fees. Unless the applicant is entitled to a renewal, he shall be licensed by the State Board of Health only after passing a satisfactory examination by the examiners showing fitness. Fees for journeyman shall be two dollars for examination and one dollar for renewal; and for the master plumber \$25.00 for examination and \$15.00 for renewal. Licenses shall expire December 31st, but may be renewed upon application made the following January or February, but if in February only upon payment of an additional fee of one dollar for a journeyman and five dollars for a master plumber.

(b) The Board may issue revocable permits pending examination, and to assist in this, may appoint without compensation, and may authorize one of its

examiners or plumbing inspectors to hold a special permit examination, the results to be reported in writing.

(c) All persons who shall furnish within ninety days after the passage of this Act satisfactory evidence to the Board that they were actually engaged in the business of a master plumber or journeyman plumber on January 1st, 1933, in any city or village of this state having 5,000 population, or more, according to the last Federal or State census, shall be entitled to receive a license as such master plumber, or journeyman plumber respectively without examination, upon payment of the fees hereinbefore provided. (Act Apr. 21, 1933, c. 349, §7.)

5887-26. Board may revoke licenses.—The Board may revoke any license obtained through error or fraud, or if the licensee is shown to be incompetent, and for a wilful violation of any of its rules and regulations or local ordinances applicable to such work. The licensee shall have notice in writing enumerating the charges. A hearing by the Board upon at least five days' notice, and right to produce testimony. The Board may appoint, in writing any competent person to take testimony, who shall have power to administer oaths, issue subpoenas and compel the attendance of witnesses. The decision of the Board shall be based on the testimony and records. One year from the date of revocations,

application may be made for a new license. (Act Apr. 21, 1933, c. 349, §8.)

5887-27. Violation a misdemeanor.—Any person violating any of the provisions of this Act or who shall wilfully make any false representation to the Board of Health in applying for a license or permit shall be guilty of a misdemeanor. (Act Apr. 21, 1933, c. 349, §9.)

5887-28. Fees to be paid to state treasurer.—All fees received under this Act shall be paid by the State Board of Health to the State Treasurer and an amount of moneys equal to the amount so paid over by said Board to said Treasurer is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated, to said Board for the purpose of carrying out the provisions of this Act. The salaries of the necessary employees of the Board and the per diem of the inspectors and examiners hereinbefore provided, their expenses and all incidental expenses of said Board in carrying out the provisions of this Act, shall be paid on order of the Board from such appropriation, but no expense or claim shall be incurred or paid in excess of the amount received from the fees herein provided. (Act Apr. 21, 1933, c. 349, §10.)

5887-29. Application of act.—This Act shall only apply in cities, villages, or boroughs having a population of 5,000 or more. (Act. Apr. 21, 1933, c. 349, §11.)

CHAPTER 36

Protection against Fire, and Regulation of Hotels and Restaurants

HOTELS, THEATERS AND OTHER BUILDINGS

5903. Defining hotels, restaurants, lodging houses, etc.

It would seem that this section is not limited to stores wherein confectionery is sold to be consumed on premises. Op. Atty. Gen., Mar. 7, 1933.

Park board of village of Excelsior may be licensed to sell non-intoxicating malt liquors. Op. Atty. Gen., Apr. 22, 1933.

Whether particular business is restaurant within meaning of beer law is primarily question of fact to be determined by governing body of municipality. Op. Atty. Gen., June 26, 1933.

Whether a residence advertised as a tourist rooming house is a hotel is question of fact. Op. Atty. Gen., Aug. 14, 1933.

5905. Hotels, restaurants, lodging houses, boarding houses, etc.

Section 4367 does not exempt war veterans from payment of fees for licenses, for hotels, restaurants, lodging houses, boarding houses, or places of refreshment. Op. Atty. Gen., May 25, 1932.

Operators of hotels, restaurants and places of refreshment within boundaries of Red Lake Reservation who do not confine their trade to Indian wards but who are either white men or Indians not under federal control must have licenses under this section. Op. Atty. Gen., May 19, 1933.

5909. Additional fire protection in larger hotels, etc.

This section supersedes §1630-56 insofar as it refers to outside standpipes in hotels and lodging houses. Op. Atty. Gen., July 24, 1933.

5910. Iron stairways for exit, and other provisions.

Fire escape which has as only exit a room containing a door which may be locked does not comply with statute. Op. Atty. Gen., May 8, 1933.

Hotel inspector being satisfied that interior stairway is fireproof may cancel outstanding fire escape order. Op. Atty. Gen., Aug. 23, 1933.

MOVING PICTURES

5934. Style of seats.

Injury to patron from falling of disconnected seat. 181M109, 231NW716.

5940. Licenses for operation of moving picture machines, etc.

An application for motion picture operator's license can be made by mail. Op. Atty. Gen., Mar. 6, 1933.

Parent and teachers' associations may show motion pictures without obtaining license, but must obtain permit from fire marshal. Op. Atty. Gen., Mar. 20, 1933.

STATE FIRE MARSHAL

5957. Power to summon and compel, etc.

Act of fire marshal in compelling person suspected of arson to testify under subpoena, held to violate the constitutional right of such person against self incrimination. 180M573, 231NW217.

DRY CLEANING AND DRY DYEING BUILDINGS AND ESTABLISHMENTS

5984. Dry cleaning and dyeing establishments must be licensed.

Use of liquid for cleaning hats and limited quantities of wearing apparel requires no license unless it is one of the liquids referred to in this section, such being question of fact. Op. Atty. Gen., May 24, 1933.

6001. Use of gasoline engines forbidden in certain cases.—No gas or gasoline engine, steam generator or heating device nor any electrical dynamo or motor except such motors as have been approved as explosion-proof by the State Fire Marshal shall be located, maintained or used inside of, nor within a distance of ten feet of any building used for the business of dry cleaning and dry dyeing as above defined except that an electrical motor may be placed within such ten feet, but without a solid fireproof wall.

Any dry cleaning or dry dyeing business located in any village or city of the fourth class may install and maintain two 2½-gallon fire extinguishers of anti-freezing liquid, to be approved by and installed as directed by the state fire marshal, in lieu of compliance with the provisions of Section 13 of this chapter providing for the extinguishment of fire in such business or establishment. ('21, c. 459, §18; Laws 1927, c. 402; Apr. 20, 1931, c. 268.)

6001-1. Must have fire extinguishers.—Any dry cleaning or dry dyeing business located in any village or city of the fourth class may install and maintain two 2½ gallon fire extinguishers of anti-freezing liquid to be approved by and installed as directed by the State Fire Marshal, in lieu of compliance with the provisions of this chapter providing for the prevention of fire in such business or establishment. (Act Apr. 26, 1929, c. 402, §2.)